

## REPORTER'S RECORD

## VOLUME 9 OF 35 VOLUMES

TRIAL COURT CAUSE NO. 1384794

COURT OF CRIMINAL APPEALS NO. AP-77,025

OBEL CRUZ-GARCIA ) IN THE DISTRICT COURT  
Appellant )  
VS. ) HARRIS COUNTY, TEXAS  
THE STATE OF TEXAS )  
Appellee ) 337TH JUDICIAL DISTRICT

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## VOIR DIRE PROCEEDINGS

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On the 7th day of June, 2013, the following  
proceedings came on to be heard in the above-entitled  
and numbered cause before the Honorable Renee Magee,  
Judge presiding, held in Houston, Harris County, Texas;  
Proceedings reported by computer-aided  
transcription/stenograph shorthand.

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1 (Open court, defendant present, no jury  
2 panel)

3 THE COURT: Back on the record in Cause  
4 No. 1384794. It's Friday, June 7th, and we do have six  
5 jurors to question today. Present at the courtroom  
6 table is Mr. Obel Cruz-Garcia, and his lawyers, Mr. Skip  
7 Cornelius and Mario Madrid. Present for the prosecution  
8 is Natalie Tise and Justin Wood. And we have the  
9 intern, Steve Walsh, for the district attorney's office.

10 We're ready to proceed with Juror No. 56,  
11 David Ball.

12 MR. CORNELIUS: 58.

13 THE COURT: 58. Juror No. 58, Todd  
14 Chaykosky.

15 Please bring him in, deputy.

16 (Venireperson sworn)

17 **TODD CHAYKOSKY, VENIREPERSON NO. 58,**  
18 was called as a prospective juror, and testified as  
19 follows:

20 **VOIR DIRE EXAMINATION**

21 **BY THE COURT:**

22 Q. Good morning. Is it Mr. Chaykosky?

23 A. That's correct.

24 Q. I want to make sure that you are the same Todd  
25 Chaykosky who was Juror No. 58 in the venire that was

1 brought over in the State of Texas vs. Obel Cruz-Garcia.

2 A. That's correct.

3 Q. And you heard my general Voir dire back on June  
4 3rd, Monday, across the hall, in the court across the  
5 hallway; is that correct?

6 A. That's correct.

7 Q. This is a continuation of that voir dire  
8 process. And the only difference is it's individual  
9 voir dire. One lawyer from each side will have the  
10 opportunity to speak with you today and I'll hold them  
11 to half an hour apiece --

12 A. Okay.

13 Q. -- so we don't take up your whole day. And I  
14 just want to make sure that even though you are under  
15 oath, there is really no right or wrong answers here.  
16 We want you to tell the truth about your general  
17 feelings. We're going to cover topics that are very  
18 similar to the ones I covered and they will be a lot  
19 more probing as to your feelings on those topics. And  
20 so, if you need anything rephrased, you don't understand  
21 anything, just ask the lawyer to rephrase it. Okay?

22 A. Okay.

23 Q. I do have three questions before we get  
24 started generally from the Judge. Do you have any  
25 religious, personal, or moral reasons you would be

1 unable to sit on a jury where the death penalty is a  
2 possible punishment?

3 A. I do not.

4 Q. Do you know of any reason why you could not be  
5 fair and impartial to both sides in a criminal case?

6 A. I don't believe so, no.

7 Q. Okay. And I'm going to let you answer "I don't  
8 believe so" at this time, but they're both going to be  
9 talking to you about that. We want to make sure that  
10 you can.

11 A. Sure.

12 Q. So, and "I don't believe so" is probably not  
13 going to be good enough.

14 A. Okay. Understood.

15 Q. Can you say "yes" or "no" right now?

16 A. Yes.

17 Q. You could be fair?

18 A. Yes.

19 Q. To both sides?

20 A. Yes.

21 Q. Okay. They may ask you a little more about  
22 that because obviously you've shown there's something  
23 you want to talk about.

24 A. Sure.

25 Q. Have you changed any of your answers from the

1 questionnaire that you filled out on that Friday, June  
2 May 31st?

3 A. No, no.

4 Q. We all have a copy of your questionnaire, the  
5 lawyers for each side and I do. So, if you need one to  
6 refer to, we can certainly make that available to you.

7 A. That would be great.

8 THE COURT: Is everyone okay with -- I have  
9 a copy that does not have any markings on it whatsoever  
10 for Juror No. 58.

11 MR. WOOD: I have no objections.

12 THE COURT: I will tender that to him.

13 Q. (By The Court) And I'm going to turn you over  
14 to Mr. Wood.

15 THE COURT: The time is 9:12. You may  
16 begin.

17 MR. WOOD: Thank you, Your Honor.

18 **VOIR DIRE EXAMINATION**

19 **BY MR. WOOD:**

20 Q. Good morning, Mr. Chaykosky. Is it Chaykosky?

21 A. That's correct.

22 Q. Okay. How are you doing this morning?

23 A. I'm doing well.

24 Q. Okay. Welcome back.

25 A. Thank you.



1 Q. Whether voluntarily or involuntarily.

2 Again, my name is Justin Wood. And Natalie  
3 Tise and I will be the ones trying this case to you if  
4 you are one of the lucky 12 chosen.

5 A. Okay.

6 Q. Steve Walsh back here at the back table, he is  
7 a law student, an intern that's working with us this  
8 summer. So, if you are on the jury you would see him  
9 coming in and out. A lot of times people get back in  
10 the jury room and wonder who are those people coming in  
11 and out of the courtroom.

12 So, Mr. Chaykosky, this part of the  
13 trial -- and let me go back and remember. You have not  
14 serve on a prior jury; is that correct?

15 A. That's correct.

16 Q. Okay. As you can probably figure out by now,  
17 this process, being a death penalty capital murder, is a  
18 little more involved than a typical trial, but this --  
19 well, no matter what kind of trial it is, this is our  
20 only chance to really get to talk to you and visit with  
21 you and find out more about you. Obviously, with this  
22 little questionnaire, I have more information than I  
23 typically would, but there will be some things I want to  
24 follow up and ask you about that you answered on that.  
25 And then some things that were talked about in general

1 with the Judge.

2                   So, the moral of the story today is just  
3 relax. This is as informal as we can possibly get in a  
4 courtroom environment. And it's very conversational.  
5 And if there is something -- if you have a feeling on  
6 one issue or another, please just let me know. The  
7 ultimate goal is for us -- being Natalie and I, the  
8 defense team, the Judge -- to find the 12 most fair and  
9 impartial, best jurors for this case. And as we visit  
10 today, you may figure out that, hey, you know what, this  
11 isn't the best case for me to sit as a juror on. Maybe  
12 I might be better on a DWI or a burglary case or  
13 something like that. And that's fine. You're not going  
14 to offend anybody by your answers or anything like that.  
15 So, I just say that up front. Just be open and honest  
16 with your answers.

17                   A couple of things I wanted to visit with  
18 you about. I see you are at U of H. Is that right?

19           A. That's correct.

20           Q. In the business school?

21           A. That's right.

22           Q. Okay. Tell me what your responsibilities there  
23 are.

24           A. Assessment and accredit agent for the college.  
25 So, every five years they have an external organization

1 come in, do their audit of the college, make sure  
2 resources are being used efficiently, and that type of  
3 thing.

4 Q. Okay. And is that then your background -- how  
5 long have you been in that role?

6 A. Ten years, actually.

7 Q. Okay. Now, I see you were born in New York and  
8 you have some history there. Is that right?

9 A. That's correct.

10 Q. When did you move to Houston?

11 A. 1992, spring of '92.

12 Q. Okay. Have you always been involved in  
13 education?

14 A. No, no. Marketing research for about three  
15 years with a media research company. And then another  
16 seven years or so with a research company dealing with  
17 the home building industry.

18 Q. Okay. So, your role in the business school is  
19 purely administrative, you don't have a professor  
20 background or anything like that?

21 A. That's correct.

22 Q. Okay. I also see you got two small ones, nine  
23 and five.

24 A. That's right.

25 Q. I'm sure they keep you busy.

1 A. Oh, yes.

2 Q. Now, one thing of interest that I was going to  
3 ask you about was, I see that at some point in the past  
4 a friend of yours wife was murdered.

5 A. That's correct.

6 Q. I'm sorry to hear that.

7 A. Yes.

8 Q. How long ago was that?

9 A. That was -- I want to say the end of '92,  
10 beginning of '93. So, I was here about a year or so.

11 Q. Okay.

12 A. My friend was still in upstate New York at that  
13 time.

14 Q. Okay. And was that a close friend of yours?

15 A. Yes.

16 Q. And basically -- you don't have to go into full  
17 detail, but what were the circumstances of that?

18 A. It turned out that it was -- they lived in an  
19 apartment complex. He worked at night. It ended up  
20 being a neighbor that they had met when they first moved  
21 in. They had become acquaintances with this individual  
22 and felt that they had, you know, some sort of, you  
23 know, "hi" -- nothing -- not a close relationship, but  
24 just a simple, you know, "hi" and they recognized each  
25 other. And it turns out that he came home one evening

1 and the person had broken into the house.

2 Q. Okay. And the wife was at home?

3 A. That's correct.

4 Q. Okay. Was that -- so, the neighbor was the one  
5 that was prosecuted for the murder?

6 A. That's correct.

7 Q. Was the -- did it look like the intent was  
8 robbery or --

9 A. No, no. It was -- I don't know whether it  
10 ended -- I mean, I can't speak to his intent  
11 necessarily, but I don't know if it was a sexual  
12 assault. I don't believe anything of that nature  
13 occurred. Potentially he might have been trying to get  
14 something in the apartment and discovered her there.  
15 Because I think he knew my friend worked at night.

16 Q. Okay. So, did you -- was it a situation that  
17 that case actually went to trial?

18 A. That's correct, yes.

19 Q. Did you have an opportunity to go back upstate  
20 or --

21 A. Obviously, I went back for the services, but,  
22 no, I wasn't present for the trial portion of it.

23 Q. Okay. But you followed that through the  
24 process for your friend?

25 A. Uh-huh.

1 Q. Did you feel like they received justice in that  
2 case?

3 A. I'd have to tell you probably not.

4 Q. Tell me about that.

5 A. My friend had gone back -- has gone back, I  
6 believe, multiple times now. My understanding is that  
7 the sentence was life in prison. And I saw nothing,  
8 based on what I was told, at least by my friend, during  
9 the court proceedings and this individual's background,  
10 that would have led me to believe that was justice, what  
11 he received.

12 Q. So, did you think he deserved more than that?

13 A. Yes, I do.

14 Q. Okay. Well, I know it's rare and unfortunate  
15 that you have to have something hit so close to home,  
16 but it probably gives you an unique perspective into the  
17 system, too, having gone through it with your friend.

18 A. Sure.

19 Q. Is there anything about that particular  
20 experience that you think would cause you to be -- I  
21 hate to say unfair, but not as fair or impartial in this  
22 case, knowing that we're talking about a murder or an  
23 alleged murder?

24 A. No.

25 Q. Okay.

1 A. No, not at all.

2 Q. You would be able to look at this case and  
3 judge this case on the facts that you are presented in  
4 this courtroom and not bring in that experience and let  
5 that weigh in on your decision?

6 A. That's correct.

7 Q. Okay. So, I saw you kind of hesitate. The  
8 Judge was right when she said one of us or both of us  
9 would probably follow up on that. When you hesitated  
10 when the Judge asked if you think you could be fair to  
11 both sides, I'm going to ask you: What was that  
12 hesitation?

13 A. I think the hesitation -- or, actually, I know  
14 the hesitation is that my wife used to work for the  
15 medical examiner's office, forensic testing, for about  
16 three years after she came here to Houston. So, from  
17 '93 to the end of '96, beginning of 1997.

18 Q. Okay.

19 A. And during her tenure there, she was there at  
20 the time with Elizabeth Johnson and there was quite a  
21 stir-up at that point about a variety of things. And I  
22 think my experience at least, in conversations with them  
23 and going to dinners and different things, is that there  
24 are people who do testing correctly and there are people  
25 who do testing that may not necessarily be correct. And

1 I think there is evidence of that here in the city  
2 itself. So, I have some hesitation, I suppose. Well,  
3 certainly I wanted to bring that to light here this  
4 morning, but I think I would tend to question a lot of  
5 stuff maybe a little more than maybe someone else who  
6 didn't have a little bit of insight that I do have. I'm  
7 certainly not a scientist or research scientist or did  
8 any of that sort of testing and all, but I think I would  
9 be much more critical of that type of information. So,  
10 whether that's good or bad, I certainly wanted to let  
11 that be known.

12 Q. Well, I appreciate you being forthcoming with  
13 that, Mr. Chaykosky. I want to make a couple of points  
14 before we go into that. You know, as a juror, you are  
15 the ultimate judge of the facts that are presented to  
16 you, the evidence that is presented to you, the  
17 witnesses that come before you. I mean, that is going  
18 to be your primary job.

19 A. Yes.

20 Q. You and your fellow jurors are going to get to  
21 evaluate every witness that takes the stand and figure  
22 out whether or not you believe them, whether you find  
23 them credible. And that goes for the evidence as well.  
24 So, you know, in a criminal case, as the Judge told you  
25 before -- and it's now on that screen beside you --



1 Natalie and I ultimately have the responsibility of  
2 proving this case to you beyond a reasonable doubt. And  
3 there are certain things that the Judge read from the  
4 indictment, that are now listed beside you, that are the  
5 elements of the capital murder in this case that we have  
6 to prove to you. All of those, each one of those items  
7 I have to prove to you beyond a reasonable doubt.

8               Now, you know, every witness or every piece  
9 of evidence or testimony that comes before you that  
10 relates to those, you are going -- you are going to be  
11 judging that. So, we can't go into the specific facts  
12 of the case or I can't tell you what witnesses you might  
13 hear from, but you see that this offenses is alleged to  
14 have occurred back in '92. That's around the timeframe  
15 that we're talking about regarding your concerns. We're  
16 talking about a murder that is alleged to have been  
17 committed. So, you can imagine that you -- in a  
18 criminal case, you could potentially hear from a medical  
19 examiner --

20           A. Right.

21           Q. -- possibly. And in a -- when we're talking  
22 about a capital murder or a murder case, what other  
23 types of evidence do you think you might see that might  
24 come -- that might come out in a trial? What might you  
25 expect?

1           A.    I would expect photographs, obviously.

2           Q.    Right.

3           A.    Some sort of information with respect to the  
4 instrument, the weapon that was used, photos of the  
5 scene itself.

6           Q.    What about scientific evidence or forensic  
7 evidence?

8           A.    Oh, certainly. You know, blood-related stuff.  
9 I would expect to see quite a bit of that.

10          Q.    DNA, possibly?

11          A.    Right.

12          Q.    Yeah. And so, it kind of goes to what you were  
13 talking about. And you were saying that you and your  
14 wife had a close connection with Elizabeth Johnson back  
15 during that time. And you are intimately familiar with  
16 some of those issues that she raised, right?

17          A.    Right.

18          Q.    So, my question to you is that, given that  
19 background, given your knowledge, do you think that you  
20 would be able to judge the evidence fairly when it was  
21 presented to you?

22          A.    Yes, I do. I certainly would want to know  
23 where the evidence was processed, but, yes, I do feel  
24 that I could.

25          Q.    Well, and naturally you would probably learn

1 that through testimony.

2 A. Uh-huh.

3 Q. But do you think that you would scrutinize that  
4 evidence more so given your background and your  
5 information that you have personal knowledge of?

6 MR. CORNELIUS: Judge, can we approach the  
7 bench and have a sidebar?

8 (At the Bench, off the record)

9 (Open court, defendant present, no jury)

10 THE COURT: Okay. Is it the agreement by  
11 both sides that Mr. Todd Chaykosky, Juror No. 58, is to  
12 be excused? State?

13 MR. WOOD: It is, Your Honor.

14 MR. CORNELIUS: It is our agreement, Judge.

15 THE COURT: And Mr. Obel Cruz-Garcia, is  
16 your agreement as well?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Very good. Thank you.

19 And what that means, Mr. Chaykosky, is that  
20 with the question they covered already, they've  
21 determined that they're in agreement that you are to be  
22 excused as a juror. Nothing personal, you understand  
23 that.

24 VENIREPERSON: Certainly.

25 THE COURT: We completely appreciate you

1 being so honest and bringing forth all of the stuff in  
2 your background that both sides wanted to hear. So, you  
3 have done your duty. You can leave today and not come  
4 back on this case.

5 And all of those instructions that I put  
6 you under, you are now released from those. You can  
7 speak with whomever you want about your jury service.  
8 And I hope that it's favorable. We couldn't have trials  
9 like this without interested and involved citizens like  
10 yourself coming down here and doing their duty. So,  
11 thank you very much.

12 VENIREPERSON: You're very welcome.

13 THE COURT: Do you need any type of excuse  
14 for work or a bus pass?

15 VENIREPERSON: No.

16 THE COURT: Okay. You're free to go.  
17 Thank you.

18 (Venireperson excused)

19 THE COURT: Anybody need a break or  
20 anything? Let me let them finish.

21 (Pause)

22 THE COURT: All right. Bring in the next  
23 juror, Maura Denman.

24 (Venireperson sworn)

25 **MAURA DENMAN, VENIREPERSON NO. 62,**

1 was called as a prospective juror, and testified as  
2 follows:

3 **VOIR DIRE EXAMINATION**

4 **BY THE COURT:**

5 Q. Good morning, Ms. Denman. How are you doing?

6 A. I'm okay. A little tired.

7 Q. Are you? We're all glad that it's Friday.

8 A. Yes.

9 Q. Okay. We want to make sure you are the same  
10 Maura Denman, Juror No. 62, from the venire in the State  
11 of Texas vs. Obel Cruz-Garcia.

12 A. That's correct.

13 Q. And you listened to my voir dire in the  
14 ceremonial courtroom across the way on Monday of this  
15 week?

16 A. Yes.

17 Q. This is the continuation of that process, the  
18 voir dire process. And we are in individual voir dire  
19 now. One lawyer from each side will have the  
20 opportunity to speak with you. I'm going to hold them  
21 to half an hour on each person. So, we shouldn't be  
22 here for more than another hour on your case. They  
23 might finish earlier, but you can expect that they  
24 probably won't.

25 And even though you are sworn, and we do

1 expect you to tell the truth, but there are no right or  
2 wrong answers here because we are asking about your  
3 feelings on the law and a little bit about your  
4 background, how things might affect you. So, if there  
5 is anything you don't understand, please ask the lawyers  
6 to rephrase it. It's fairly informal.

7 I do have three questions I need to ask of  
8 you before they begin. The first one is, do you have  
9 any moral, personal, or religious reasons why you would  
10 be unable to sit on a jury where the death penalty is a  
11 possible punishment?

12 A. No, I don't.

13 Q. Do you know of any reason why you could not be  
14 fair and impartial to both sides in a criminal case?

15 A. No.

16 Q. And have any of your answers on the  
17 questionnaire that you filled out on Friday, May 31st,  
18 have any of those changed?

19 A. Not that I'm aware of.

20 Q. Very good. I appreciate that. I'm going to  
21 turn you over to Ms. Tise.

22 THE COURT: It is 9:31, Ms. Tise.

23 MS. TISE: Thank you, Judge.

24 VOIR DIRE EXAMINATION

25 BY MS. TISE:

1 Q. And it's Dr. Denman, correct?

2 A. Yes.

3 Q. Thank you so much for coming back today. We  
4 appreciate it. I know you don't really feel like you  
5 had a choice in the matter, but we really do appreciate  
6 you being here and participating in this process.

7 A. Thank you.

8 Q. So, what did you think when you got this  
9 questionnaire on Friday of last week and saw that this  
10 was a death penalty case?

11 A. I was a little bit shocked. I really didn't  
12 know what to expect when I went to jury duty. The only  
13 other time I've been called for jury duty, I was  
14 dismissed within the first 20 minutes, as was everyone.  
15 They didn't panel anyone that day. So, I had no  
16 experience. So, I wasn't really expecting it, you know.

17 Q. Well, I can tell you this is not the norm most  
18 of the time. We generally only do these questionnaires  
19 on capital cases. So, don't let that deter you from  
20 your future jury service, that you are going to have to  
21 come in and tell your life story.

22 A. No. That's okay.

23 Q. But I'm sure you can understand how come on  
24 capital cases it would be important for us to have a lot  
25 of information.

1           A.    Yes.

2           Q.    Because it's an important situation and it's  
3 not something people are asked to do every day. So,  
4 your gut reaction was just shocked?

5           A.    Just, I wasn't expecting it. You know, but if  
6 that's what you are looking for and that's what you  
7 need, that's what you need, so...

8           Q.    Right. After you've had time to kind of think  
9 about it over the weekend before you came back for the  
10 Judge's voir dire, what were your feelings then?

11          A.    A little bit nervous, but at the same time, I  
12 consider the whole idea of the jury of your peers and  
13 what that means. And I really hadn't had to think about  
14 that that much before. And it's a serious thing.

15          Q.    Absolutely.

16          A.    And so, I guess what I'm saying, I wouldn't be  
17 here if I wasn't willing and able to do this and to  
18 approach it in a serious kind of manner. And so, I  
19 thought about it over the weekend. And everybody who  
20 knows that you are going to jury duty says: Oh, well,  
21 tell them this or tell them that and...

22          Q.    To get out --

23          A.    That's not who I am, so...

24          Q.    We appreciate that. Because a lot of times we  
25 find that people come in and they say what they have to



1 say to get off the jury. And I have actually witnessed  
2 my brother and my father having a long discussion about  
3 how to get off a jury right at the Thanksgiving dinner  
4 table. And I appreciate people who are willing to come  
5 in and give honest answers. And, you know, if they wind  
6 up on the jury, then that's fine. They respect the  
7 process.

8 A. Yes. And that is where I am.

9 Q. Right. I see that. And I really do appreciate  
10 that. And that is all this is really about is your  
11 honest answers. And there is no right or wrong answer,  
12 just how you really feel.

13 So, I want to ask you if you had really  
14 thought about your feelings on the death penalty before  
15 you were called down for jury duty on this case?

16 A. I have not seriously given lots of thought to  
17 it since probably college. I had a class in college  
18 called can your conscience be your guide. It was small  
19 liberal arts college and we talked about all kinds of  
20 things. I'm sure we discussed at length in that course,  
21 but since then I haven't really. So, over the weekend,  
22 I did consider it and I have never really had any issues  
23 with the death penalty --

24 Q. Okay.

25 A. -- at all. I think it just needs -- you know,

1 it's a serious thing and it's not to be used lightly.

2 Q. Absolutely.

3 So, where would you put your feeling on the  
4 death penalty if you had to scale of one to ten and one  
5 was just against it, period, extremely, and ten is for  
6 it, period, extremely, and if you couldn't choose five  
7 because we want you to --

8 A. Well, you can tell by my answers on the  
9 questionnaire where I wrote "depends" out in the margins  
10 a lot. I really think that, again, it isn't used  
11 lightly. So, it really depends on whether it's merited  
12 in the case. So, I'm not against it, out of hand, and  
13 I'm not a hundred percent for it because it's not to be  
14 used in every case. So, I think it depends on the  
15 situation.

16 Q. Okay.

17 A. And so, I guess you could say I'm five, but I  
18 don't know if that really describes me.

19 Q. Okay. I'm going to let you keep five.

20 A. I'm not trying to wiggle. I really honestly  
21 think that you can't give a black-and-white answer to a  
22 lot of the questions.

23 Q. And you can't. And I think you are absolutely  
24 right about that. And I'm going -- I usually say don't  
25 choose five because I want to see one side or the other

1 where people come down, but I'm going to let you stick  
2 with five because I hear what you're saying and I  
3 respect it.

4 A. Okay.

5 Q. The Judge talked about the kinds of crimes that  
6 the death penalty might be available for. Were you able  
7 to absorb all of that?

8 A. I think so.

9 Q. And how do you feel about that? Do you think  
10 those are the kinds of crimes we ought to have the death  
11 penalty for?

12 A. I believe so, yes.

13 Q. Okay. It's always got to be a murder.

14 A. Yeah, but more than --

15 Q. But a murder plus. It's more than your  
16 ordinary murder. Ordinary murder is going to be a range  
17 of punishment of five to life. A capital murder has an  
18 aggravating circumstance that bumps it up.

19 A. Uh-huh.

20 Q. And it's not just any aggravating circumstance.  
21 It's the ones that the Legislature has listed.

22 A. Uh-huh.

23 Q. And some of them are things like committing the  
24 murder while doing another serious felony, like a  
25 robbery, a typical convenience store robbery where they

1 shoot the clerk. That's an aggravated robbery plus a  
2 death and that's capital murder.

3 A. Right.

4 Q. If you kill a child under 10 years old. If  
5 you -- and that's a new one. That one wasn't part of  
6 the law a while back. That one has been fairly new. If  
7 you kill a police officer in the line of duty. Do those  
8 sound like the kinds of things we should have the death  
9 penalty for?

10 A. I think it should be considered in the case,  
11 yeah.

12 Q. Okay. Would you add anything or take anything  
13 away or -- that you can think of?

14 A. To the list of things that were included?

15 Q. Uh-huh.

16 A. No, not that I can think of without looking at  
17 it and -- yeah.

18 Q. How do the other members of your family feel  
19 about the death penalty?

20 A. I believe that my husband feels similar to me,  
21 but it's not something we talk about.

22 Q. Sure.

23 A. And I'm really not aware of how, like, my  
24 sister or my mom or anyone extended feels.

25 Q. So, nobody in your immediate family has really

1 strong feelings against the death penalty that you're  
2 aware of?

3 A. Not that I'm aware of, no.

4 Q. Okay. And, you know, we talk about it a lot  
5 just kind of in a vacuum, you know, this is, you know, a  
6 death penalty case, and in theory what do you think  
7 about it, and in theory, you know, do you support it;  
8 but this is the real deal here, where, you know, it's  
9 game time.

10 A. Yeah.

11 Q. And so, I want you to take a look over here at  
12 Obel Cruz-Garcia, the defendant in this case. He's  
13 sitting right there in the gold tie with the headset on.

14 A. Yeah.

15 Q. At the end of this trial, if you answer the  
16 special issues in such a way that leads to the death  
17 penalty, those answers are going to lead to the  
18 execution of that living, breathing human being that is  
19 sitting right here in this room with us.

20 A. I understand that.

21 Q. And are you comfortable with that? I guess  
22 comfortable is not the word. It shouldn't be  
23 comfortable.

24 A. No.

25 Q. But can you do that?

1           A.    If the evidence of the case merits it, warrants  
2 it, and that is what we're presented with, then, yes.

3           Q.    Okay. I want to talk to you about some of the  
4 things on your questionnaire.

5           A.    Okay.

6           Q.    You talked about what you felt like the goals  
7 of punishment were.

8           A.    Yeah.

9           Q.    And you want to talk to me a little bit about  
10 your feelings on that?

11          A.    Yeah. When I looked at that question, I could  
12 kind of see, you know, ideally rehabilitation is a  
13 wonderful goal that we would all like to see happen, but  
14 I don't believe that it's possible in all cases.

15          Q.    Okay.

16          A.    And so, I guess what I was trying to get across  
17 in my answer to that is that when you look at individual  
18 cases and individual people, it needs to be taken into  
19 consideration what is possible or probable in their  
20 case. And if rehabilitation is possible, then I think  
21 then that's what you should strive for. But if it's not  
22 possible, then, no. And so, I can't remember exactly  
23 how the question -- what the possible answers were, but  
24 I know rehabilitation was one. And one was about  
25 deterrence. And I personally am not 100 percent

1 convinced that our system is set up in such a way that  
2 we really are effectively deterring criminals with the  
3 punishments that are handed out. And so, I guess, what  
4 I was trying to say is that that doesn't seem realistic  
5 in all cases either. And so, depending on the case,  
6 rehabilitation may not appropriate, deterrence isn't  
7 necessarily -- and deterrence is thinking about other  
8 people. It's not thinking about the person who  
9 committed the crime.

10 Q. Right.

11 A. And so, that's why I answered the way that I  
12 did.

13 Q. Okay.

14 A. That you want to try to prevent the person who  
15 actually committed the crime rather than focusing on  
16 deterring other people.

17 Q. Do you ever think that there are some types of  
18 crimes that punishment is also a goal, just the  
19 punishment itself, that there are things that you can do  
20 and there should be a consequence --

21 A. There should always be a consequence.

22 Q. -- that commensurate with what you have done,  
23 and sometimes punishment, just for its own sake, is a  
24 goal? How do you feel about that?

25 A. I think there needs to be a consequence for

1 actions that are taken that require them, but I think in  
2 a death penalty case, for instance, I wouldn't use the  
3 death penalty for the sake of using the death penalty.

4 Q. You are not an eye-for-an-eye person, in other  
5 words; is that what you're saying?

6 A. No. I'm not 100 percent an eye for an eye,  
7 correct.

8 Q. Okay. Fair enough.

9 And the law doesn't even really allow for  
10 that. Just, you know, it all depends on the  
11 circumstances. And I like the fact that on your  
12 questionnaire you made that very clear, that you  
13 answered the questions -- a lot of the questions are  
14 black-and-white questions, but black-and-white answers  
15 are not appropriate to these questions. There are  
16 questions that call for black-and-white answers and  
17 black and white is not going to work.

18 A. I think they can't really be black and white  
19 until they're applied to a specific case. A lot of  
20 those questions, anyway.

21 Q. That's what the law -- that's exactly what the  
22 law says.

23 A. Okay. I don't like --

24 Q. Let's talk about some of the -- you talked  
25 about how a sentence of life in prison is enough



1 punishment for a person convicted of capital murder, and  
2 you agreed with that, but then you said it depends. Do  
3 you believe there are some cases where a sentence of  
4 life in prison is not enough punishment?

5 A. Yes.

6 Q. Okay. I want to talk to you some about what to  
7 expect in this process and some of this, you know, is  
8 stuff that the Judge covered, but I want to talk to you  
9 in a little more detail. First of all, do you  
10 understand how the trial process works and how there are  
11 two phases, the guilt phase and the punishment phase?

12 A. Yes.

13 Q. And you are going to hear different evidence.  
14 There is a different goal in each one of those phases.  
15 So, the evidence is going to be different. Do you see  
16 how that works?

17 A. I hadn't really thought about that before, but,  
18 yes, I can see how that works.

19 Q. The goal in the first phase, guilt, is to  
20 determine whether the defendant committed this crime. A  
21 lot of times jurors are like: Why can't we hear all  
22 about him in the guilt phase of the trial, all his  
23 criminal history, all the good things about him; you  
24 know, why can't we hear all of that? Well, the reason  
25 you can't hear all of that is because it's not relevant.

1 It's focused on did he do this crime. Okay?

2           There are exceptions where prior offenses  
3 can come in in guilt, but they're pretty rare. Okay?  
4 Most of the time that's stuff you are going to hear in  
5 punishment because it's relevant to the issue of what  
6 should happen to him if you decide that he is guilty of  
7 this crime. Does that seems fair?

8           A. Yeah, makes sense.

9           Q. So, in the guilt phase of the trial, as you  
10 know in a capital murder, you know a little bit about  
11 what we're looking at because you heard the Judge talk  
12 about the elements. And I'll put them up on the screen.  
13 And you can look at them there on your right if it's  
14 easier. Over here on this other side there is a little  
15 screen, or on the big board. Whatever is easier for  
16 you.

17           But those are the elements that I have to  
18 show. And that's all I have to show. That's all the  
19 law requires me to show. And it's enough. It's plenty.  
20 It covers all of the main issues in the case, but the  
21 reason I bring it up is because every criminal case --  
22 and I have tried a bunch of them -- you know, there is  
23 always things that we don't know. I don't get to  
24 control the evidence. I don't get to write down my  
25 check list of all the things that I would like to have.

1 I don't get to choose the witnesses. I have the case as  
2 it's been brought to me and as I present it to you.

3 Okay?

4                   Actually, the person who has the most  
5 control over what evidence is presented in a case is the  
6 defendant in that case. He chooses what he leaves  
7 behind. If he doesn't want to leave prints -- I'll give  
8 you some examples.

9           A. But you just said the defendant. And that's  
10 presuming guilt.

11          Q. I'm sorry?

12          A. You just presumed guilt.

13                   THE COURT: We're all assuming. These are  
14 hypotheticals. We're not talking about this defendant.

15                   VENIREPERSON: Okay.

16          Q. (By Ms. Tise) The defendant in the case that's  
17 charged, he's the person who controls the evidence  
18 that's left behind.

19          A. Well, actually, the perpetrator who actually  
20 committed it, whether it's the defendant or not. But I  
21 know what you're saying.

22          Q. I'm not talking about this one.

23          A. No. I know.

24          Q. I'm talking about the defendant in whatever  
25 case in my hypothetical.

1 MR. CORNELIUS: I still have an objection  
2 with the question. No offense, but that's assuming  
3 whoever it is is guilty. It's the perpetrator, is what  
4 you are trying to say, but it doesn't necessarily mean  
5 this defendant.

6 A. I understand what you're saying.

7 Q. (By Ms. Tise) I'm changing it to perpetrator.  
8 Don't think I'm trying to --

9 A. No. I know. Not in this case. Talking  
10 hypothetically.

11 Q. Okay. I'm trying to just give you a  
12 hypothetical and I will use the word perpetrator.

13 A. Okay.

14 Q. So, the perpetrator in the case, the person who  
15 committed the crime -- okay -- is the person who  
16 controls what's left behind.

17 A. Yes.

18 Q. If he doesn't want to leave fingerprints, he  
19 can wear gloves?

20 A. Gloves.

21 Q. If he doesn't want to leave semen, he can wear  
22 a condom. If he wants to have no witnesses, he can  
23 commit the crime where no one sees or at least try to.

24 A. Yeah.

25 Q. Or he can choose to commit the crime in front

1 of people he trusts, you know, that he thinks will  
2 not --

3 A. Have his back.

4 Q. Uh-huh. Or, he can choose to commit the crime  
5 against people he thinks are weak and who won't stand up  
6 against him, won't report the crime. So, there are a  
7 lot of things that the defendant can choose and those  
8 are -- that determines a lot of the evidence. Okay?

9 A. Uh-huh.

10 Q. Also, the witnesses in the case, I don't get to  
11 choose who they are. They are just who they are. Okay?  
12 And none of them are going to be perfect. There aren't  
13 going to be any perfect police officers or perfect  
14 civilians who come to you as witnesses in the case. But  
15 the question that will be before the jury is: Can you  
16 listen to the evidence that you've heard, determine  
17 whether you believe it, determine whether your belief is  
18 beyond a reasonable doubt, and if so, can you convict  
19 the defendant based on that? Does that seems reasonable  
20 and fair to you?

21 A. Yes.

22 Q. Okay. You recognize that if a criminal case  
23 was a puzzle, those elements are the pieces that you  
24 have to have. There is a lot of other pieces of the  
25 puzzle that are there, but if you don't have them, it's

1    okay, you can set those aside.  So, the law requires you  
2    to hold me to having those essential pieces of the  
3    puzzle.

4           A.    May I ask a question?

5           Q.    Uh-huh.

6           A.    That last part bothered me maybe because I  
7    didn't really understand it and nobody explained it.  By  
8    unknown manner and means.

9           Q.    Yes.

10          A.    So, you're saying that you have to prove beyond  
11   a reasonable doubt that he committed the act of murder  
12   and you don't necessarily know how he committed it?

13          Q.    That's true.  The law doesn't require me to  
14   show you how he committed it.

15          A.    Okay.

16          Q.    That's one of the options.  One option is sharp  
17   instrument and the other is by an unknown manner and  
18   means.  How do you feel about that?

19          A.    So, we're being asked to answer both of those  
20   then or --

21                   THE COURT:  It would be either/or.  The  
22   jury would have the -- six could believe that it was by  
23   a sharp instrument and six could believe by an unknown  
24   manner and means.

25          A.    Okay.  I see what you're saying.

1 Q. (By Ms. Tise) Are you comfortable with that?

2 A. I guess. I had never seen that before, so I  
3 didn't exactly know what that meant.

4 Q. Okay. Do you think that's unfair?

5 A. If the evidence shows beyond a reasonable doubt  
6 that he committed an act and you don't exactly know how  
7 he committed the act, then I think that's okay.

8 Q. Okay.

9 A. Yeah.

10 Q. Do you think or --

11 A. No. I mean, if that's what the evidence shows,  
12 that murder was committed and that he was the one that  
13 committed the murder, whether that's through eyewitness  
14 testimony or through confession or whatever, then --

15 Q. Right.

16 A. -- then that's okay. Yeah.

17 Q. Right. Okay.

18 A. Okay.

19 Q. One of the reasons why we have that, you see  
20 that this is a 1992 case.

21 A. Uh-huh.

22 Q. I have to talk to you in hypotheticals.

23 A. Sure.

24 Q. But can you think of some things about the fact  
25 that the date is 1992 that may lead you to why that's an

1 unknown manner and means?

2 A. Yeah.

3 Q. What kind of things come to mind? What  
4 kinds --

5 A. Things happen to evidence. I mean, evidence  
6 gets lost, evidence gets destroyed by elements, things  
7 like that.

8 Q. Sometimes --

9 A. You've got a high standard you have to go up  
10 against if you are going to show it.

11 Q. That's right. That's right. Lots of times in  
12 cold cases evidence gets lost, as you said. Witnesses  
13 die. Sometimes cases are cold because bodies aren't  
14 found for a period of time.

15 A. Yeah.

16 Q. And when you have a few bones that have been  
17 interfered with by the elements or animals, or -- you  
18 know, those kinds of things happen and you cannot tell  
19 from two or three bones what a cause of death is  
20 usually.

21 A. Yeah.

22 Q. And so, those are kind of some of the things.  
23 The law allows us to plead our case as an unknown manner  
24 and means in situations like that because, otherwise,  
25 we'd just have to say: Well, we can't prove how he



1 died, so we have to just not pursue the case. How do  
2 you feel about that?

3 A. I think you have to do what you have to do with  
4 what you are presented, but I think that makes the  
5 standard really high because you have to show, without  
6 that additional evidence -- you know, I don't think it's  
7 impossible by any means.

8 Q. Okay. But would you raise our standard because  
9 the case is old or because --

10 A. No. I'm not saying that. I'm saying the  
11 situation that you are put in is a difficult situation  
12 because you have to then present evidence to a jury to  
13 make a decision with incomplete evidence.

14 Q. Okay.

15 A. And so, the evidence that you have has to show  
16 your case. That's all I'm saying. I'm not saying it's  
17 impossible, I'm not saying that I would need a higher  
18 standard or a higher bar. I'm just saying you're put in  
19 a difficult position.

20 Q. Okay. And I just want to know how you as a  
21 juror, you know, respond to that, how you feel about  
22 that, how you react to that. And I want to know that  
23 you can still follow the law and hold me just to the  
24 elements.

25 A. Yes, I can definitely hold you to that.

1           Q.    You know, things like lost evidence or missing  
2 witnesses, those are things that every human being --  
3 you might go back in the jury room and go: Well, I wish  
4 I could have heard what that person said or I wish I  
5 could have seen that. But what you will be charged to  
6 do is look at those elements and decide whether or not  
7 what we did present --

8           A.    Uh-huh.

9           Q.    -- you believe beyond a reasonable doubt.

10          A.    Beyond a reasonable doubt.

11          Q.    And whether I met them.

12          A.    Yeah.

13          Q.    And so, what we ask you to do is set aside the  
14 I-wonder things. You know, I wish I knew, I wonder, and  
15 just look to the elements and see if they are satisfied.

16          A.    Uh-huh.

17          Q.    Do you think you can do that?

18          A.    I think I can.

19          Q.    Okay. Sometimes we have accomplices or parties  
20 testifying in cases and sometimes we don't. You might  
21 hear about parties in a case and wonder why they didn't  
22 testify. Can you think of reasons why they might not?

23          A.    Yes.

24          Q.    They have a Fifth Amendment right not to.

25          A.    I was going to say, yeah, they've got the right

1 not to testify, but...

2 Q. And --

3 A. If they are not living, of course, they're not  
4 going to be here to testify, but...

5 Q. Maybe they want a deal and we're not willing to  
6 offer it. Those kinds of things. Sometimes you have  
7 people testify and you have to evaluate whether you  
8 think they are an accomplice or a party. And you  
9 understood the Judge's examples on what a party is?

10 A. Yes.

11 Q. And there is a little twist on it called  
12 co-conspirator law that's also out there where people  
13 can conspire to commit a crime together and then they  
14 are responsible for what their co-conspirators do beyond  
15 the conspiracy. That law also has another little  
16 exception to it where if you abandon the conspiracy and  
17 say: I don't want to be a part of this anymore, then  
18 you are not responsible for what happens after that.

19 A. Okay.

20 Q. There is a lot of details like that that the  
21 Judge will instruct you on if you are a juror in this  
22 case, but what I want to direct your attention to is  
23 that you might have to decide whether somebody testifies  
24 for you is a party or not --

25 A. Okay.

1 Q. -- based on a legal standard.

2 THE COURT: You've got five minutes.

3 MS. TISE: Thank you, Judge.

4 Q. (By Ms. Tise) Do you think you can do that?

5 A. I think so.

6 Q. If you find that they are a party, I will tell  
7 you now if they're testifying in exchange for a deal,  
8 you will know that.

9 A. I was going to ask, will we know that.

10 Q. You will know that.

11 A. Okay.

12 Q. That will be presented to you. So, if you  
13 don't hear about a deal, then there is no deal. Okay?

14 A. Okay.

15 Q. If you decide that they're a party, then you  
16 have to have corroboration of their testimony.

17 A. Okay.

18 Q. Okay. And corroboration doesn't mean you have  
19 to have a second person who says what they said.

20 A. Physical evidence or --

21 Q. Something totally different. It could be  
22 physical evidence at the scene. You know, for instance,  
23 it could be you have a party who is there who says this  
24 is what happened and then you have a gun that's got the  
25 defendant's fingerprint on it. That would be

1 corroboration. It doesn't have to be a mountain of  
2 evidence. It doesn't have to be evidence that stands  
3 alone. It just has to be something that also shows that  
4 the defendant is your guy, the perpetrator in the case.

5 A. Okay.

6 Q. Okay? Are you comfortable with that?

7 A. Yes.

8 Q. Okay. Do you have any strong feelings -- I  
9 know you've got a biology background.

10 A. Uh-huh.

11 Q. Tell me a little bit about that.

12 A. Well, I studied general biology in college and  
13 then I went off to graduate school and I studied  
14 parental care primarily. I studied ecology, evolution,  
15 and animal behavior. But I worked in the rain forest  
16 studying poisonous frogs.

17 Q. So, I love those poisonous frogs when I go to  
18 the -- all those pretty colors.

19 A. I basically studied the way the mothers take  
20 care of the tadpoles. It's a very different kind of  
21 system than frogs that you are familiar with usually.

22 Q. That's really interesting.

23 So, is there anything about your background  
24 where you feel like you would go into a case with  
25 scientific evidence, and, you know, be more critical,

1 less critical, or more -- more hesitant to follow it or  
2 less hesitant?

3 A. I don't think so. I just think that knowing  
4 the scientific method helps me interpret what's  
5 presented to me. I don't know that I would change any  
6 standards or anything like that. I think I would be  
7 able to understand things that maybe other people on the  
8 jury might need more explanation. Yeah.

9 Q. Okay. Did you understand how -- when the Judge  
10 went through the special issues how those all worked?

11 A. Yes.

12 Q. Basically, the different things that have to be  
13 shown.

14 MS. TISE: Go ahead and put the first one  
15 up there.

16 Q. (By Ms. Tise) There are some key words in  
17 there. First of all, probability. As a scientist, I  
18 don't really have to explain to you what that is. It's  
19 not a certainty and it's not a possibility.

20 A. Yeah.

21 Q. In between.

22 A. Uh-huh.

23 Q. Criminal acts of violence. Don't have to be  
24 murders, don't have to be, you know, even crimes against  
25 people. Could be slashing somebody's tires out of anger

1 or threatening someone. Do you think that's a fair  
2 standard or do you think that's --

3 A. Well, it says also they would constitute a  
4 continuing threat to society. And in the case of  
5 slashing tires, I don't know.

6 Q. So, you don't think a property crime could show  
7 a person --

8 A. Maybe it was the specific property crime you  
9 listed, slashing a tire; but, no, I understand what's  
10 being asked.

11 Q. And society can include other people in prison,  
12 clinicians, other inmates, guards.

13 A. Okay.

14 Q. Do you accept that?

15 A. Yes.

16 Q. This particular case is a capital that happened  
17 in '92. So, the law in '92 is what we apply.

18 A. Okay.

19 Q. And we don't have life without parole in '92.  
20 That came in what, 2005.

21 A. Okay.

22 Q. So, there is a possibility of parole at 35  
23 years or the death penalty.

24 A. Okay.

25 Q. Okay. So, society -- that is why I asked --

1 told you that. Because society can include prison  
2 society or people on the outside?

3 A. Okay.

4 Q. Okay. On the second special issue, it kind of  
5 gets you to reaffirm the law of parties. And what I  
6 want to ask you about that is, you see that question  
7 gives you the option to send someone to death row even  
8 if they are not the person who pulled the trigger or  
9 wielded the knife.

10 A. I understand that.

11 Q. Okay. If I show they intended to kill or they  
12 anticipated that a human life would be taken. Are you  
13 comfortable with that or are you a person who feels like  
14 if they didn't do the act themselves, they should never  
15 get the death penalty?

16 A. Because this isn't the only standard that's  
17 deciding whether or not the death penalty will be  
18 applied, I think I'm willing to accept it. Because the  
19 other issues are going to help decide if that's  
20 appropriate in the case.

21 Q. And they should.

22 A. Yeah.

23 Q. But that wouldn't be an automatic for you?

24 A. No.

25 Q. You wouldn't say: Well, if he is not the



1 actual --

2 A. No. It would depend on those other issues.

3 Q. Okay. And on the third special issue,  
4 mitigation, that's basically the final thing to answer  
5 before you decide. And the thing about mitigation is it  
6 has to be sufficient and sufficient in light of, as you  
7 can see in the previous sentence, all of the evidence.  
8 Okay?

9 A. Yeah.

10 Q. So, you look at sufficiency and you also look  
11 at the circumstances of the offense. Is it sufficient  
12 in light of that? Is it sufficient in light of the  
13 defendant's character and background? And then you look  
14 at his personal moral culpability. How responsible is  
15 he for what happened. And that's what sufficiency  
16 refers to.

17 So, mitigation is something that can be --  
18 I mean, anything could be mitigating. Would you agree  
19 with me? You could actually -- let me give an example  
20 because that's a broad statement.

21 A. Yeah.

22 Q. Anything can be mitigating. Here is why. You  
23 can say the defendant is a drug user and has been  
24 addicted to drugs and that's a big problem for him, and  
25 that's part of why this crime happened and that's

1 mitigating. Or, you can say the defendant's been clean  
2 and sober his whole life and has never, you know, done  
3 any of that kind of stuff and that's mitigating.

4 A. Uh-huh.

5 Q. You can say the defendant came from a broken  
6 home and had this really sad upbringing, no family  
7 support, and that's mitigating. Or, you can say the  
8 defendant has all these people that love him who are  
9 here on his behalf and that is mitigating.

10 A. Uh-huh.

11 Q. It's all in the way you look at it. So, that's  
12 why the "sufficient" word is really important. It's not  
13 just can you find mitigation because I guarantee you  
14 can. There is always something. But is it sufficient  
15 in light of all the other evidence that you've heard.

16 A. Uh-huh.

17 Q. Does that seem reasonable?

18 A. Yes.

19 Q. Do you think can you apply that standard?

20 A. I believe I can.

21 Q. Okay.

22 MS. TISE: I'm going to pass the juror.

23 Thank you.

24 THE COURT: Thank you, Ms. Tise.

25 Mr. Madrid, you may proceed.

1 MR. MADRID: Thank you, Your Honor.

2 VOIR DIRE EXAMINATION

3 BY MR. MADRID:

4 Q. Dr. Denman?

5 A. Yes.

6 Q. Is that how people address you or do you they  
7 say Ms. Denman?

8 A. Mainly Ms. Denman, but a lot of people don't  
9 know that I have my doctorate.

10 Q. You work at the Nature Discovery Center?

11 A. Yes.

12 Q. And you went to Austin College. Is that right?

13 A. That's correct.

14 Q. That's the kangaroos, right?

15 A. We're the fighting roos, yes.

16 Q. My sister went there. That's why I knew that.  
17 I wouldn't have known that otherwise.

18 A. Okay.

19 Q. So, you have a science background.

20 A. Uh-huh.

21 Q. I mean, I don't myself. And I couldn't even  
22 tell you what ecology is. That's what I was wondering,  
23 but studied I guess --

24 A. Plants and animals, but primarily --

25 Q. That's what ecology is.

1           A.    Yes.   Primarily I studied animal behavior.  I  
2   studied frogs taking care of their young.  And so, I was  
3   out in the rain forest doing my research, watching frogs  
4   do what they do.

5           Q.    There was -- it seems like, based on your  
6   questionnaire and the questions from Ms. Tise, I guess  
7   you put a lot of thought and you said these things  
8   aren't black and white.  You'd agree with that?

9           A.    Yeah.

10          Q.    And you think -- I think you think before you  
11   speak probably more than most people do.  You have kind  
12   of well thought-out -- like, this isn't an easy thing to  
13   consider.  You would agree with that?

14          A.    It's definitely not an easy thing.

15          Q.    And, I mean, you had a couple of hesitations  
16   and I could see you thinking.  There was one of the  
17   questions that was asked about the sentence of life in  
18   prison not being enough punishment.

19          A.    Uh-huh.

20          Q.    And it's one of these that's asked in the  
21   questionnaire and they ask it both ways.  And let me  
22   see.  A sentence of life in prison is enough punishment  
23   for a person convicted of capital murder.  And then it  
24   asks:  A sentence of life in prison is not enough.  So,  
25   it's the same question, whether you agree or disagree.

1 And you agreed both times.

2 When you were asked the question here by  
3 Ms. Tise, I saw you thinking about that. What were you  
4 going to say?

5 A. Well, just like I think I said a little bit on  
6 some of the -- it really depends on the specific  
7 situation, those mitigating circumstances, those other  
8 special issues, that you can't just automatically say  
9 that life in prison isn't going to be enough without  
10 knowing those circumstances.

11 Q. And you had said, when you testified, also on  
12 questionnaire, that's why you put "depends" a lot. You  
13 would look at each situation, wouldn't you?

14 A. Yeah. I think that's what you are charged  
15 with. I mean, you are in a specific case, you're  
16 listening to specific evidence, there's a specific  
17 defendant. I don't think the questions, as they are,  
18 apply -- I mean, you can't have one answer across the  
19 board. That's just...

20 Q. I think that's what the questions are looking  
21 for, though, because we're trying to identify people  
22 that do have those answers.

23 A. Yeah. You are looking for polarized opinions.

24 Q. Yes.

25 A. And my opinion is not polarized.

1           Q.    And when we're speaking of this, I'm just  
2 talking kind of in the air, but I'm not talking about  
3 punishment or guilt or innocence. You understand that?  
4 Do you understand after the Judge on Monday explained  
5 this and you spoke with Ms. Tise for a bit, that there  
6 is two phases of the trial.

7           A.    Uh-huh.

8           Q.    What do you understand those to be?

9           A.    The first phase is hearing the evidence to  
10 determine guilt or innocence. And if they are guilty,  
11 then the punishment phase is to determine what the  
12 appropriate punishment will be given the evidence and  
13 given mitigating circumstances.

14          Q.    Okay. So, I think you can almost teach a class  
15 on it already. Because most people wouldn't be able to  
16 break it down like that. That's what it is. We have  
17 guilt-innocence. And in any case, whether it's a  
18 traffic ticket or a DWI or capital murder, in Texas you  
19 have -- we have two phases of trial. And if you find  
20 somebody not guilty, everybody goes home, case over. If  
21 you find somebody guilty, we go to the second phase,  
22 which is punishment. Okay?

23                       And so, when we are talking about that --  
24 and I think you understand this because you even wanted  
25 to make it clear that there is a presumption of

1 innocence. And you understand that, right?

2 A. Right.

3 Q. Sitting here today, you presume -- and, you  
4 know, I didn't introduce myself. I'm Mario Madrid and  
5 this is Skip Cornelius. You probably don't remember.

6 A. Yeah.

7 Q. This is our client, Obel Cruz-Garcia.

8 A. Uh-huh.

9 Q. And so, Mr. Cruz-Garcia, you know, sitting here  
10 today, you don't have an opinion as to whether he is  
11 guilty or not guilty, do you?

12 A. No.

13 Q. And when we talk about punishment, we're not  
14 assuming anything, we're not assuming that we're getting  
15 to punishment. I don't want anybody -- you know, when  
16 we speak to people, they think, hey, we'll talk about  
17 the death penalty. Because, you know, there are two  
18 phases of trial. And would you agree with that?

19 A. Yes.

20 Q. So, you know, that is the first phase. And I'm  
21 pretty sure you understand, besides the fact that you've  
22 said it, but because a lot of times when we speak in  
23 hypotheticals, the State and the defense, we say things.  
24 And I don't think the State means anything by saying,  
25 well, the defendant.

1           A.    I knew what she meant.

2           Q.    You're even more careful in saying, well, even  
3 in a hypothetical case, the person charged is -- they  
4 are the defendant, but they may be not guilty. Right?

5           A.    Yeah.

6           Q.    So, you understand that, I'm sure.

7                    So, if you did get to the phase of finding  
8 somebody guilty in a hypothetical capital murder case,  
9 you are going to end up having these three special issue  
10 questions. And depending on how you answer, they could  
11 lead to death or life in prison.

12          A.    Uh-huh.

13          Q.    And so, you went over the first one, whether  
14 there is a probability that somebody will commit  
15 criminal acts of violence in the future. And would you  
16 be able to weigh the evidence, the evidence that you  
17 heard in the trial and any other kind of evidence in  
18 punishment evidence -- and that could be, you know, this  
19 person was a great father or husband, or whatever,  
20 neighbor, and bad things, this person did all these bad  
21 things. Would you be able to weigh those things and  
22 wait before you answer that "yes" or "no," or would it  
23 be -- it's a long question, and I'm sorry. But some  
24 people have the feeling, hey, this person committed  
25 capital murder, I found him guilty, and I know I have to



1 answer these questions, but, come on, they committed  
2 capital murder, so, obviously, they are going to be a  
3 continuing threat. Other people will wait, you know.  
4 And I'm wondering where you sit on that.

5 A. I think I have to wait.

6 Q. Okay.

7 A. I think you can't decide what the punishment is  
8 without -- I don't know.

9 Q. You would wait for the evidence?

10 A. Yeah. I'm not wired that way. I'm wired that  
11 this is the process and this is what's reasonable and  
12 accepted by law, and I can't either presume guilt or  
13 presume once guilty what the punishment should be  
14 without hearing the evidence.

15 Q. Okay. Thank you. The reason I ask this is  
16 because a lot of people are not wired that way.

17 A. Yeah.

18 Q. Hey, it's a capital murder -- not even it's a  
19 capital murder. If it's a murder, that person should  
20 get the death penalty. You know, a lot of people in  
21 society think that way. That's why we ask these  
22 questions.

23 A. Too serious.

24 Q. So, you would be able to follow Special Issue  
25 No. 1. You had a little bit of hesitation on the issue

1 of law of parties, if somebody intended, the second  
2 special issue, if somebody intended, whether they  
3 intended or they committed the -- for the person to be  
4 deceased or they anticipated it. And you answered that,  
5 well, it's all the special issues together. Okay? But  
6 you had a little bit of hesitation on that, on whether  
7 they anticipated, or, you know, they weren't the person  
8 that committed, whether it was a shooting, stabbing, or  
9 whatever.

10 Did I confuse you with the question.

11 A. No, you didn't confuse me. I'm trying to  
12 remember what my hesitation was.

13 Q. The hesitation was you were asked if -- you  
14 know, if they weren't the actual -- let's just call them  
15 the -- you know, the person that committed the crime,  
16 but they were a party, you know, whether it was a bank  
17 robbery or whatever, the person driving the car, so they  
18 should have -- they should have anticipated or they  
19 intended the other person to go in and kill the victim.

20 A. Right.

21 Q. Then you had thought about that.

22 A. I don't have hesitation with respect to whether  
23 or not they're held accountable for that, if, in fact,  
24 they are proven guilty of that, you know, and to be  
25 punished for that. I -- no, I don't.

1 Q. Because you would wait till the third question  
2 to decide mitigation? Because this question is just  
3 asking if you find from the evidence that -- beyond a  
4 reasonable doubt that the defendant actually caused the  
5 death or intended to. So, it's actually a fairly easy  
6 question. I think it is because either you find that  
7 they did or they didn't, right? And then you go to the  
8 third question, which is you would look at the  
9 mitigating circumstances and decide if they warranted,  
10 you know, life in prison or death.

11 | A. Uh-huh.

12 | Q. You could do that?

13 | A. I believe I can.

14 Q. Do you have any questions of me at all?

15 Because I don't have any more questions.

16 | A. I don't believe so.

17 Q. Thank you.

18 | A. Thank you.

19 MR. MADRID: Pass the juror.

20 THE COURT: Thank you, Mr. Madrid.

21                   Okay. Dr. Denman, would you please step  
22 out? There is a side door here. The deputy is going to  
23 assist you in getting out.

24                   VENIREPERSON:   Okay.

25 THE COURT: We'll be right back with you.

1 (Venireperson exits courtroom)

2 THE COURT: As to Juror No. 62, Maura  
3 Denman, what says the State?

4 MS. TISE: Judge, can we have a couple of  
5 minutes? We're discussing it.

6 THE COURT: Yes.

7 (Pause)

8 MS. TISE: We're going to exercise a strike  
9 on Dr. Denman.

10 THE COURT: All right. Bring Dr. Denman  
11 back in, please.

12 (Venireperson enters courtroom)

13 THE COURT: Okay. Dr. Denman, you are  
14 excused as a juror in this case. We appreciate you  
15 coming down today, and all three days that you have been  
16 down. We couldn't do this without good involved  
17 citizens like yourself who are willing to give us all of  
18 this personal information. I assure you that this is  
19 going to be shredded.

20 VENIREPERSON: Okay.

21 THE COURT: So, you have done your duty.  
22 You don't have to come back on this case. And if you  
23 need some type of excuse for work, Deputy Perry has that  
24 for you. If you need a bus pass, we have that, too.

25 VENIREPERSON: Thank you.

1 THE COURT: Thank you very much.

2 MR. CORNELIUS: Thank you, ma'am.

3 VENIREPERSON: Thank you.

4 THE COURT: I need a two-minute break.

5 (Recess)

6 (Open court, defendant present, no jury)

7 THE COURT: Do both sides agree to proceed  
8 on Juror No. 70, Clarence Anderson, out of order?

9 MS. TISE: We do, Judge.

10 MR. CORNELIUS: We do, too.

11 THE COURT: Okay. And, Mr. Obel  
12 Cruz-Garcia, do you join your counsel and agree to  
13 proceed on Juror No. 70, Clarence Anderson, out of  
14 order?

15 MR. CORNELIUS: Yes, ma'am.

16 THE COURT: Very good. Thank you, sir.  
17 Please call the juror in, Deputy.

18 (Pause)

19 THE BAILIFF: 69 and 70 are both here.

20 THE COURT: Who's here?

21 THE BAILIFF: Both of them, 69 and 70.

22 THE COURT: I'd have to go through the same  
23 with them. So, let's bring in 70. We've already got  
24 approval on that. Okay?

25 (Venireperson sworn)

1                   **CLARENCE ANDERSON, VENIREPERSON NO. 70,**  
2 was called as a prospective juror, and testified as  
3 follows:

4                   **VOIR DIRE EXAMINATION**

5 **BY THE COURT:**

6           Q.    Good morning, Mr. Anderson.

7           A.    Good morning, Your Honor.

8           Q.    I need to make sure that you are -- let me get  
9 your sheet -- you are the same Clarence Leroy Anderson  
10 that is Juror No. 70 in the venire brought over on the  
11 State of Texas vs. Obel Cruz-Garcia?

12          A.    Yes, ma'am, I am.

13          Q.    And you heard my general voir dire on Monday --

14          A.    Yes, ma'am.

15          Q.    -- in the courtroom across the hallway?

16          A.    Yes, ma'am.

17          Q.    This is a continuation of that voir dire  
18 process, wherein one lawyer from each side will get to  
19 speak with you.

20          A.    Yes, ma'am.

21          Q.    And they're going to cover some of the same  
22 topics that I covered, but it will be a lot more  
23 personal to you.

24          A.    Yes, ma'am.

25          Q.    I give them each 30 minutes and I'll hold them

1 to that time. And there is no right or wrong answers.  
2 Even though you're under oath and we expect you to  
3 testify truthfully, but there's not a right or wrong  
4 answer, just truthfully as to your feelings.

5 A. Yes, ma'am.

6 Q. If you have questions you need them to  
7 rephrase, please just ask them to do that.

8 And I have three questions that I need to  
9 ask you before we continue on. Do you have any moral,  
10 personal, or religious reasons why you would be unable  
11 to sit on a jury where the death penalty is a possible  
12 punishment?

13 A. No, ma'am.

14 Q. Do you know of any reason why you could not be  
15 fair and impartial to both sides in a criminal case?

16 A. No, ma'am.

17 Q. Have any of your answers from the questionnaire  
18 that you filled out last Friday, May 31st, changed?

19 A. No, ma'am.

20 Q. Very good. All of the lawyers, and I also,  
21 have a copy of your questionnaire. So, if you need one  
22 just let us know. All right?

23 THE COURT: And we're ready to proceed.

24 Mr. Wood, I have 10:21. Please proceed.

25 MR. WOOD: Thank you, Your Honor.

VOIR DIRE EXAMINATION

BY MR. WOOD:

Q. Good morning, Mr. Anderson

A. Good morning.

Q. Welcome back. How are you doing this morning?

A. Doing good.

Q. Good. Happy Friday to you.

A. Yes.

Q. My name, again, is Justin Wood. And together with Natalie Tise, we'll be the ones trying this case to you if you are one of the lucky ones that are chosen. All right?

A. Yes, sir.

Q. Okay. Steve Walsh back here in the back, he is a law student and an intern of ours for the summer. And if you are chosen on the jury, you'll probably see him coming in and out of the courtroom a lot, too.

So, just like the Judge said, you know, this is -- we want you to be open and honest with your answers. Feel free to let us know anything that -- you know, chime in if I say something or ask something that you have feeling on. This is our chance to really get to know you and get to talk to you one-on-one.

A. Yes.

Q. I know you had -- you were on a trial many



1 years ago, several years ago. Is that right?

2 A. Yes, sir.

3 Q. Was that in this building or probably in  
4 another building?

5 A. Actually, it was in the old, the very old  
6 courthouse.

7 Q. Yeah. That's what I thought.

8 So, you may have a perfect memory of that,  
9 but in case you don't remember, this process today is a  
10 little different and more intense than that one probably  
11 on the liquor violation.

12 A. Oh, yeah.

13 Q. And our goal here through this process is to  
14 find the 12 of you that will be the most fair and  
15 impartial for this kind of case.

16 A. Yes, sir.

17 Q. And that's going to be our questions. I'm  
18 going to be asking you some of what you -- about some of  
19 what you wrote in your questionnaire, some of what we  
20 talked about in general through the Judge, and go about  
21 it that way. Okay?

22 A. Yes, sir.

23 Q. So, what did you think Friday -- last Friday  
24 when you came in and had to fill out this questionnaire  
25 that you might be a juror on a death penalty case?

1 A. Oh, my God.

2 Q. You wish you had gotten a DWI trial, huh?

3 A. I'm not going to say no to that. I mean, I  
4 think it's interesting, but it's a little scary, too.

5 Q. Understandably, so. We're talking about some  
6 serious consequences, right?

7 A. Yes, sir.

8 Q. In a case that obviously is going to be taken  
9 seriously.

10 A. Yes, sir.

11 Q. Before we get into some of those specifics, I  
12 want to ask you a little bit about your background. I  
13 see you work with the City of LaPorte. Right?

14 A. Yes, sir.

15 Q. And you work in animal control?

16 A. Yes.

17 Q. So, you work closely in that position with  
18 LaPorte Police Department and law enforcement, do you  
19 not?

20 A. Yes, sir. We're a division of the police  
21 department.

22 Q. Okay. That's what I thought.

23 Do you -- what is your role there? What  
24 are your duties there at animal control?

25 A. I'm the supervisor over animal control. I'm

1 over the officers and street division as well as the  
2 shelter.

3 Q. Okay. So, you oversee and are involved to some  
4 extent in some of the investigations?

5 A. Yes, sir.

6 Q. Okay. And I think you mentioned that through  
7 your work there I'm sure you've worked with Belinda  
8 Smith over the years?

9 A. That's her name. I didn't write it down. I  
10 couldn't think of it till afterwards. Yes, sir.

11 Q. And that Belinda, for the record, is the  
12 prosecutor here in the office that deals with those  
13 cases?

14 A. Yes, sir. She handles all of the animal cases  
15 for the district attorney's office.

16 Q. Do you work with her very closely or from time  
17 to time?

18 A. I have met her once. She taught a class for  
19 me.

20 Q. Okay.

21 A. As far as any of the cruelty cases, we don't  
22 deal with them that much. The police officers actually  
23 handle them since we're a division of them. And by  
24 state law, we can handle -- we can file up to a Class C  
25 misdemeanor, but -- and, actually, I think -- I want to

1 say a Class A that could go into a felony. And so, we  
2 actually have our police officers handle those cases.  
3 So, I don't deal with her that much.

4 Q. Okay. So, nothing about your dealings with her  
5 would prevent you from being fair to either side?

6 A. No, sir.

7 Q. Okay. And I know I mentioned your prior jury  
8 service. That was a case you sat on around 15 years  
9 ago. It was a liquor violation or something like that?

10 A. Yes, sir.

11 Q. And I saw you were the foreman on that case?

12 A. Yes, sir.

13 Q. Anything about that prior jury service that  
14 would prevent you from being fair in this case?

15 A. No, sir.

16 Q. Okay. And so, your dad is a police officer,  
17 right?

18 A. Yes, sir.

19 Q. And that's -- he's still --

20 A. He officially retired last month. He had  
21 retired from one department several years ago and then  
22 was a reserve officer for the City of Clear Lake Shores.

23 Q. Okay.

24 A. And he retired at the beginning of this month.

25 Q. So, what department was he with prior to that?

1           A.    He was with Harris County for a while and then  
2 he went to Precinct 8. He got out of law enforcement  
3 for a couple years. And then he went back to Nassau Bay  
4 where he retired.

5           Q.    Okay. So, you grew up with a dad in law  
6 enforcement?

7           A.    Yes, sir.

8           Q.    I'm sure that adds an interesting twist on a  
9 childhood.

10          A.    You don't get away with anything.

11          Q.    Right.

12                        So, you know, based on that and you working  
13 with a lot of police officers on a daily basis, I'm  
14 referring to one of your answers in your -- or a couple  
15 of your answers in your questionnaire, which I thought  
16 was really interesting and also very appropriate. When  
17 asked about certain statements, whether you agree with  
18 them or not, one statement that you had said that you  
19 agree with is that you would tend to believe a law  
20 enforcement officer over a civilian witness. And then  
21 the next statement was: Some law enforcement shade the  
22 truth to make their case better. And you agreed with  
23 both of those.

24          A.    Yes.

25          Q.    Which is actually probably very appropriate,

1 right --

2 A. Yes.

3 Q. -- based on your background?

4 A. Yes.

5 Q. Would you agree with me, Mr. Anderson, that,  
6 you know, everybody can potentially shade the truth,  
7 right?

8 A. Yes, sir.

9 Q. And growing up with a dad in law enforcement  
10 and working in law enforcement, are you telling us that  
11 naturally you'd give some credit to police officers,  
12 right?

13 A. Yes.

14 Q. Do you remember when the Judge talked to you on  
15 Monday, last -- this past Monday about some of the  
16 general concepts of a trial and all of that stuff?

17 A. Yes, sir.

18 Q. And she was talking to you about witness  
19 credibility and she told you what the rules are. And  
20 the rule is that every witness starts out equal before  
21 you've heard them testify. Right?

22 A. Yes, sir.

23 Q. And that applies to police officers,  
24 prostitutes, priests, whoever the person might be.  
25 Right?

1 A. Yes, sir.

2 Q. And can you agree with me or would you agree  
3 with me that you would treat all witnesses equal, even  
4 police officers, until you've heard from them?

5 A. Yes, sir.

6 Q. Are you going to give a police officer more  
7 credibility just because you know they are a police  
8 officer or will you wait to hear -- to hear them and see  
9 what they have to say?

10 A. I would hear what they had to say.

11 Q. Okay. Thank you.

12 One quick other item I was going to ask you  
13 about. I see you've got two adult sons. Is that right?

14 A. Stepsons, yes.

15 Q. And one is 35 and how old is the other one?

16 A. Thirty-nine.

17 Q. Okay. And I have to ask this because it's on  
18 your questionnaire. I don't mean to -- I hate to have  
19 to pry into your personal business, but I see that one  
20 of your sons has had a criminal case in the past?

21 A. Solicitation of a minor over the Internet, yes,  
22 sir.

23 Q. Was that here locally?

24 A. Galveston County.

25 Q. Okay. How long ago was that?

1           A.    Three years ago, four years ago, three years  
2 ago.

3           Q.    Okay.

4           A.    Actually, it was probably four years ago  
5 because he waited to go to trial for a while.

6           Q.    Okay. Did he go to trial on that?

7           A.    He pleaded guilty.

8           Q.    Okay.

9           A.    Served two years.

10          Q.    Okay. Two years in prison?

11          A.    Yes, sir.

12          Q.    Okay. And is he out on parole, discharged?

13          A.    He's discharged. He has to register, but he's  
14 discharged.

15          Q.    Okay. What do you think about that? What are  
16 your thoughts on that, having gone through that  
17 experience? Was that something close to you or --

18          A.    I don't understand it. It's one of those --  
19 the Internet to me is a dangerous thing. I mean, it's  
20 one of those you can get going back and forth on the  
21 Internet. My biggest problem with my son is it's one of  
22 those he actually left there and drove 30 minutes. And  
23 in my opinion, in that 30 minutes, where did it not  
24 click to him that this was a juvenile. So, I just don't  
25 understand it.



1 Q. Yeah. Do you still have a relationship with  
2 him or --

3 A. Yes.

4 Q. Okay. Is there anything about having gone  
5 through that experience, such a close personal  
6 experience, that would affect you to be able to be a  
7 fair juror in a criminal case?

8 A. I don't see that there would be any problem.

9 Q. Okay. Because I know sometimes it's hard. We  
10 tell people that you have to check your past background  
11 and experiences at the door when you are a juror.

12 A. Yes, sir.

13 Q. Well, that's easier said than done sometimes.

14 A. Yes, sir.

15 Q. Naturally for some people they aren't able to  
16 do that. And that's fine. You know, that's just one of  
17 those things that we have to dig a little bit and find  
18 out. You think that experience, that personal  
19 experience is something that you could set aside and  
20 listen to the facts of this case?

21 A. Each case is different. I mean, it's one of  
22 the things that I think my training has taught me, each  
23 case is different.

24 Q. Okay. Well, I appreciate that, Mr. Anderson.  
25 Sorry I had to ask you about that.

1           A.    That's okay.

2           Q.    Having been through the process, knowing the  
3 criminal justice system to the extent that you do, I  
4 want to visit with you just briefly about the parts of a  
5 trial and how a trial breaks down. As you know, a trial  
6 is two parts. We've got to decide the guilt-innocence  
7 phase of the trial --

8           A.    Yes.

9           Q.    -- and then the punishment phase of the trial.

10          A.    Yes.

11          Q.    Obviously, the evidence that is presented to  
12 you as a juror is different in each phase as well. In  
13 the guilt phase, we are just focusing on the facts of  
14 the case. We present to you evidence, Natalie and I  
15 have the burden of proof of proving the case to you  
16 beyond a reasonable doubt, we've got to prove all of  
17 those elements of capital murder to you, and our  
18 evidence in the guilt phase has to focus in on that  
19 case.

20          A.    Yes, sir.

21          Q.    And all of the other stuff, whether it be  
22 criminal history, whether it be good things about the  
23 defendant, other bad things, whatever it might be, those  
24 don't come into play until the punishment phase. Do you  
25 follow me?

1 A. Yes, sir.

2 Q. Well, on the guilt phase, the Judge read you  
3 that indictment. What we have to prove to you for  
4 capital murder are those certain things. And it's also  
5 on that screen to your right. Those are the items that  
6 we have to prove to you beyond a reasonable doubt. Is  
7 that clear?

8 A. Yes, sir.

9 Q. Okay. And you will hold us to our burden on  
10 those elements, will you not?

11 A. Yes, sir.

12 Q. Now, the Judge told you that -- and you know  
13 that -- where you sit right now, the defendant is  
14 presumed innocent.

15 A. Yes, sir.

16 Q. And he carries that throughout the trial. He  
17 does not have to take the stand. The defense does not  
18 have to call any witnesses. They can sit there and not  
19 question any of our witnesses, if they wanted to. We  
20 know that is not going to happen in this case --

21 A. Yeah.

22 Q. -- because these are two very skilled lawyers,  
23 but in a vacuum that could happen.

24 A. Yes, sir.

25 Q. We carry that burden. Are you going to -- are

1 you okay with that? Do you understand that?

2 A. Yes, sir.

3 Q. Okay. And right in line with that, just like I  
4 said, the defendant does not have to put forth any  
5 evidence, he does not have to take the stand and  
6 testify, and he has that Fifth Amendment right not to do  
7 so. And that's something you are also okay -- or are  
8 you telling us and I think you agreed on Monday that you  
9 are okay with that?

10 A. I understand taking the Fifth because in some  
11 of the cases that I have filed -- and they are all  
12 municipal cases and all Class C misdemeanors -- our  
13 prosecuting attorney has not made the points that he  
14 needed to make and I have seen defendants -- as you  
15 know, in most class C cases the defend themselves.

16 Q. Right.

17 A. Get up when they would have been better off not  
18 saying anything and actually hurting themselves from --  
19 by speaking.

20 Q. Right.

21 A. So, yeah, I understand that.

22 Q. So, you've seen it firsthand?

23 A. Yes, sir.

24 Q. In your role there at animal control, have you  
25 ever had to go into court and testify?

1 A. Yes, sir.

2 Q. Okay. On few or many occasions?

3 A. Few. I mean, probably 25 over the period.

4 Q. How did you like that, being on that witness  
5 stand?

6 A. Not really. I mean...

7 Q. Well, you aren't alone. Most people would  
8 agree with you. It's a little different experience,  
9 right --

10 A. Yes.

11 Q. -- getting up there. I've had to do it and  
12 this is what I do every day. So, getting up there on  
13 that witness stand, immediately nerves set in, right?

14 A. Yeah.

15 Q. So, you are going to be able to identify with  
16 what some witnesses go through, won't you?

17 A. Yes, sir.

18 Q. Okay. The Judge went over some concepts,  
19 Mr. Anderson, in the beginning of trial regarding law of  
20 parties and accomplice witnesses.

21 A. Uh-huh.

22 Q. Was that -- were those concepts you were  
23 generally familiar with?

24 A. Yes, sir.

25 Q. And we'll talk a little bit about that in a

1 minute, but in talking about the phases of trial, if as  
2 a jury the 12 of you decide and convict the defendant  
3 and find him guilty, then only at that point, as you  
4 know, do you move into the punishment phase of the  
5 trial.

6 A. Yes.

7 Q. And like I said, at that point you may start  
8 hearing evidence of, you know, different things about a  
9 defendant, about a defendant's background, you might  
10 hear good things, bad things, whatever it is. You get a  
11 fuller picture of who we're talking about at that point.

12 Now, in a capital murder trial, the Judge  
13 explained to you -- and I think for some jurors it's  
14 comforting and also maybe a little surprising -- that  
15 you don't just go back there and say: We want to assess  
16 the death penalty in the case or not.

17 A. Yeah.

18 Q. You have to follow those three special issues  
19 and answer those questions. Do you remember that?

20 A. Yes, sir.

21 Q. And those are questions that have to be  
22 answered independently and individually from each other.

23 A. Yes, sir.

24 Q. And to do that, the Judge is going to instruct  
25 you that you can evaluate -- you will be asked to

1 evaluate all of the evidence. You can evaluate the  
2 evidence you heard in the guilt phase of the trial, you  
3 can evaluate the evidence, if you heard any, in the  
4 punishment phase of the trial in coming to a decision on  
5 the questions.

6 A. Yes, sir.

7 Q. So, I want to visit with you a little bit about  
8 those special issues. On Special Issue No. 1, we call  
9 that the continuing threat issue. And you will be asked  
10 again to find beyond a reasonable doubt whether or not  
11 we've met our burden on this issue. And essentially you  
12 are going to be asked to decide if there is a  
13 probability that the defendant will commit future acts  
14 of violence. And in determining that, there are a few  
15 things in that question I want to talk to you about.

16 First of all is that word "probability."  
17 The Judge spoke to you a little bit about that on  
18 Monday, but probability, would you agree with me,  
19 Mr. Anderson, is something less than a certainty, right?  
20 Probability doesn't mean an absolute certainty.

21 A. Yes.

22 Q. But probably a little more than a possibility,  
23 right?

24 A. Yes, sir.

25 Q. More likely than not, some people say. A

1 probablity that the defendant will commit criminal acts  
2 of violence. Those words, criminal acts of violence, I  
3 don't have to prove to you -- or Natalie and I don't  
4 have to prove to you that it's necessarily another  
5 murder or capital murder that's committed. Right?

6 A. Yes, sir.

7 Q. Criminal acts of violence can mean many things.

8 A. Yes, sir.

9 Q. It can be a crime of -- an act of violence  
10 against a person or it may be property. Maybe it's a  
11 threat. Whatever in your mind constitutes a criminal  
12 act of violence.

13 A. Uh-huh.

14 Q. Is that clear?

15 A. Yes, sir.

16 Q. And then whether or not that would constitute a  
17 continuing threat to society. And society can mean many  
18 things. It can be the streets you and I walk in and  
19 live in in Harris County. It can mean the society  
20 within prison, the prison walls, fellow inmates, guards,  
21 those people that work in prison. Would you agree with  
22 me?

23 A. Yes, sir.

24 Q. And up front, I usually -- I got off track a  
25 little bit, but in a capital murder case there is



1 typically two punishments, the death penalty, and if the  
2 death penalty is not sought or assessed, then it's --  
3 currently it's life in prison with no parole.

4 A. Yes, sir.

5 Q. But that's current law. That law did not go  
6 into place until 2005. So, prior to that, we have to go  
7 back and assess the laws that were in place at the time.  
8 And as you know, the offense date in this case is  
9 alleged to be 1992. So, we have to look at the laws as  
10 they were in '92. Does that make sense?

11 A. Yes, sir.

12 Q. And back in '92, it wasn't life without parole  
13 because we didn't have that. It was life with the  
14 possibility of parole or the eligibility of parole after  
15 serving a certain number of years. And in this case,  
16 it's 35 years.

17 A. Okay.

18 Q. So, that's why we talk about the society,  
19 whether it be in prison or out of prison.

20 A. Yes, sir.

21 Q. Is that a question that you are comfortable  
22 with? Any questions on that?

23 A. No. It seems pretty straight forward.

24 Q. Okay. And I ask you that -- you know, when you  
25 are asked to decide this question, you, as a jury, will

1 have just convicted the defendant of capital murder in a  
2 hypothetical situation in order to get to that --

3 A. Yes, sir.

4 Q. -- spot.

5 Well, when doing so and when evaluating  
6 that question, will you agree with me, Mr. Anderson,  
7 that you are not going to automatically answer that  
8 question "yes" just because you found someone guilty,  
9 right?

10 A. No. I would answer the question the way I felt  
11 that it needed to be answered.

12 Q. Right. And by evaluating the evidence and --

13 A. Yes, sir.

14 Q. -- testimony and what you've learned?

15 A. Yes, sir.

16 Q. Okay. And in that second question, that second  
17 special issue, No. 2, that deals with that concept of  
18 law of parties. And, again, it's that same standard of  
19 beyond a reasonable doubt. You, as a jury, have to  
20 decide if, first of all, the defendant actually caused  
21 the death of the deceased.

22 A. Yeah.

23 Q. But if you will recall, the Judge talked about  
24 that. Sometimes it doesn't necessarily have to be the  
25 fact that he actually caused the death of the deceased.

1 It can be that he intended to kill that person or  
2 possibly another person or should have anticipate that a  
3 human life would be taken. Is that clear to you?

4 A. Yes, sir.

5 Q. Okay. And, again, you have to answer that  
6 question independently, too, and evaluate the evidence  
7 on that.

8 A. Yes, sir.

9 Q. And at that point, you would go on to the third  
10 question. Now, I want you to stop and think about where  
11 you would be at as a juror or as a jury in this case, in  
12 this situation. If you had answered -- if you, first of  
13 all, found the defendant guilty, you have answered that  
14 beyond a reasonable doubt you believe there is a  
15 probability that the defendant will commit future acts  
16 of violence, so you've answered "yes" to the question.  
17 You've answered "yes" to the second question. You are  
18 one question away from, essentially, sending a message  
19 to the Judge, who will eventually assess the death  
20 penalty, who will execute the defendant.

21 A. Yes, sir.

22 Q. So, the answer to this question is the only  
23 question that is lingering at this point. Right?

24 A. Yes, sir.

25 Q. And at that point, you've got to step back and

1 the law says that you have to look at -- and it tells  
2 you -- all of the evidence. You've got to look at the  
3 circumstances of the offense, you've got to look at the  
4 defendant's character and background, if you know  
5 something about that, if there is evidence for that.  
6 You've got to look at the personal moral culpability of  
7 the defendant. How involved was he, how -- you know,  
8 where was he at in this offense. And in deciding that  
9 you've got to say: Is there some sufficient mitigating  
10 circumstance or circumstances that would warrant  
11 something less than the death penalty? And in this  
12 case, life in prison with the possibility of parole.  
13 It's basically a gut check, and you say: Is there a  
14 mitigating circumstance or circumstances out there that  
15 would warrant a life sentence rather than death, and are  
16 those circumstances sufficient?

17 Now, think about this. You know, as far as  
18 mitigating circumstances go, we could be talking about,  
19 really, any number of things. Right?

20 A. Yes, sir.

21 Q. Any number of things might be considered a  
22 mitigating circumstance. It could be something as  
23 extreme as possible mental illness. Would you agree  
24 with me?

25 A. Yes.

1           Q.    Maybe you learned -- for example, you've been  
2 around.   That was kind of down in probably your neck of  
3 the woods.   Back when Andrea Yates drowned her five  
4 children.

5           A.    Yes, sir.

6           Q.    Do you recall that case?

7           A.    Yes, sir.

8           Q.    It's a sad tragic case that hit home right here  
9 in Harris County, but --

10          A.    Yes.

11          Q.    -- she went through a couple of trials, but one  
12 of the things that came out in trial, obviously, was her  
13 mental illness.   And there wasn't a lot of debate on  
14 whether or not she had some serious mental illness.

15          A.    Yeah.

16          Q.    You, as a jury, might consider something like  
17 mental illness as a mitigating factor possibly.

18          A.    Yes.

19          Q.    And then you've got to evaluate that with the  
20 evidence, but you can imagine that a skilled lawyer  
21 could argue that almost anything is a mitigating  
22 circumstance, right?

23          A.    Yes, sir.

24          Q.    Maybe you learn that the defendant has a  
25 long -- a person has a long history of drug abuse.   A

1 lawyer might say that's a mitigating circumstance, but  
2 on the flip-side, you might learn that that person has  
3 never been involved in drugs and has been clean and  
4 sober their whole entire life. On the flip-side of  
5 that, a lawyer could argue that also is a mitigating  
6 circumstance.

7 A. Yes.

8 Q. Right?

9 A. Yes.

10 Q. So, if you believe there is a mitigating  
11 circumstance, you've got to then take it a step further  
12 and find that it's a sufficient mitigating circumstance  
13 in light of all of the evidence.

14 A. Yeah.

15 Q. In light of the offense, the crime --

16 A. Yes, sir.

17 Q. -- whatever it might be.

18 Is that something that you would be  
19 comfortable answering?

20 A. Yes, sir. I don't know how comfortable you can  
21 be answering that question, but --

22 Q. Well --

23 A. -- I think it's something --

24 Q. A very good point Because it's not something  
25 that's going to be comfortable.

1 A. No.

2 Q. Or easy to do.

3 A. No.

4 Q. But something that you could do?

5 A. Yes.

6 Q. Okay. Mr. Anderson, we've talked a lot in  
7 general terms, you know. You know that at the end of  
8 this case, first, you know, we would be asking that you  
9 find the defendant guilty based on all of the evidence.  
10 We would then ask you to evaluate all of the evidence  
11 and if the evidence leads you in the direction of  
12 answering those questions, "yes," "yes," and "no," that  
13 the answers to those questions would essentially lead to  
14 the execution of Obel Cruz-Garcia. Right?

15 A. Yes, sir.

16 Q. And you can -- people talk about being in favor  
17 of the death penalty and supporting the death penalty as  
18 a possible punishment, but you are now very close to  
19 being seated on a jury where that is going to be -- it's  
20 going to be real.

21 A. Yes.

22 Q. So, as you sit here, you know that Obel  
23 Cruz-Garcia sits here in this courtroom right there with  
24 the headphones on.

25 A. Yes.

1 Q. If the evidence led you in a direction that  
2 allowed you to answer those questions in that way, could  
3 you return -- could you do that? Looking at the  
4 defendant, would you be able to do that?

5 A. It would be hard, but I would have to answer  
6 the questions honestly.

7 Q. And you would do that based on the evidence and  
8 the testimony?

9 A. Based on the evidence and the testimony.

10 MR. WOOD: I pass the juror. Thank you,  
11 Mr. Anderson.

12 VENIREPERSON: Thank you.

13 THE COURT: Mr. Cornelius, please proceed.

14 **VOIR DIRE EXAMINATION**

15 **BY MR. CORNELIUS:**

16 Q. Mr. Anderson, I'm Skip Cornelius. The Judge  
17 introduced us the other day.

18 A. Yes, sir.

19 Q. Well, this is Obel Cruz-Garcia. You met him  
20 the other day. Mario Madrid --

21 A. Yes, sir.

22 Q. -- my co-counsel across the table from me.

23 I want to hone in on the last question.

24 Can you ever imagine yourself not assessing a death  
25 penalty where you've convicted someone of capital



1 punishment?

2 A. Yes, sir.

3 Q. Tell me about that.

4 A. It depends upon the mitigating circumstances.  
5 I mean, from what y'all have explained to me, it would  
6 be if somebody was involved in something, wasn't  
7 expecting it, you know, wasn't accepting the person to  
8 die or something, or wasn't -- accidents happen. You  
9 understand what I'm saying? It would be --

10 Q. All of those things that you said -- sorry for  
11 interrupting.

12 A. That's fine.

13 Q. All of those things that you've said indicate  
14 to me that the person is not guilty of capital murder.

15 A. Yes, sir. I guess it would be.

16 Q. So -- we'll come back to it.

17 A. Yes, sir. No problem.

18 Q. I'm not giving enough information to answer.

19 Tell me about yourself. Tell me about the  
20 life and times of Clarence Anderson.

21 A. Lived most my life in LaPorte. I've been with  
22 my job for 28 years.

23 Q. Since you were 20, I guess?

24 A. Twenty-one.

25 Q. Twenty-one.

1           A.    And I wanted to ask a question.   I think I  
2 might have answered something wrong.   Did I put 48 or 49  
3 on my --

4           Q.    Forty-eight.

5           A.    I'm 49.   I apologize.

6           Q.    You can't be on the jury.   That's it.

7           A.    No.   I'll tell you -- well, if I make a  
8 mistake, I'll tell you I made a mistake.   I mean...

9           Q.    Only kidding.

10          A.    I learned a long time ago that, you know, if  
11 you mess up, you admit up to it, you know.   And that  
12 honesty is the best policy.

13          Q.    Okay.   That's not a problem at all.

14          A.    Okay.

15          Q.    But tell me something more about yourself.  
16 What do you do?   Other than working for the police  
17 department, what else do you do?

18          A.    I help my parents out quite a bit there.  
19 They're in their early seventies.   I normally have  
20 dinner with them every night.   I've got two stepsons.  
21 Well, I was divorced.   Unfortunately, my ex-wife passed  
22 away, but out of the marriage, I manage to keep the two  
23 kids.   I've got six grand kids and I enjoy them.   They  
24 are all out of state right now.   I'm ready for them to  
25 move back.   A little far away.   I like to cook.   I like

1 to go out and do things.

2 Q. What about your law enforcement friends, do you  
3 have friends that you hang out with? That's kind of a  
4 young term. I don't know why I used that term "hang  
5 out."

6 A. Not really. I mean, I'm friendly with  
7 everybody that I work with and we're friends. And, I  
8 mean, if we need something or something happens, we're  
9 there for each other. But I have always kind of kept my  
10 personal life separate from my employment and things  
11 like that. I found it to be -- not that -- I like the  
12 people. I've just found it to be good business.

13 Q. How many are on the LaPorte Police Department?

14 A. There are 75 sworn officers and I think a total  
15 of 105 in the department. We're not -- the animal  
16 control is not sworn police officers. We're part of the  
17 support services division.

18 Q. I gave a speech out at Webster about two months  
19 ago --

20 A. Yes, sir.

21 Q. -- at the police department. And I was shocked  
22 at how large their police department is.

23 A. It's amazing how much that area has grown down  
24 there.

25 Q. Unbelievable. Not in size, but --

1 A. Number, yes.

2 Q. Has LaPorte done that, too?

3 A. When I started, there were 35 officers. And it  
4 was probably 50 employees. So we've better than  
5 doubled.

6 Q. But that's -- don't let me put words in your  
7 mouth. That's not your social circle, that professional  
8 circle?

9 A. No, sir.

10 Q. So, do I need to worry about an impact that  
11 might be on you from the other law enforcement people  
12 there that are probably going to find out if you get  
13 selected to serve on this jury that you are on a capital  
14 murder jury?

15 A. No, sir.

16 Q. I know you wouldn't want it to.

17 A. No. And I don't feel that it would.

18 Q. I know you wouldn't want it to.

19 A. I'm not going to lie to you. If I get picked,  
20 this is not what I'm looking forward to; but I figure  
21 it's a service and it's what you are supposed to do and  
22 you're supposed to be as honest as you possibly can.  
23 And, you know, y'all asked me not to look up the  
24 gentleman's name. I didn't do it. I want -- because if  
25 I was sitting in his shoes, I would want the most honest

1 people that I could get. And I would want everything  
2 followed. I believe in fair.

3 Q. So, you don't feel any pressure by the fact  
4 that you work for a police department to do what they  
5 would be proud of?

6 A. No, sir.

7 Q. Okay.

8 A. I mean...

9 Q. What about your dad, as a life-long or career  
10 police officer, what, if any, impact would that have on  
11 you?

12 A. None that I can think of.

13 Q. What are his feelings about capital punishment,  
14 if you know?

15 A. I think he supports it. I mean, you know, but  
16 I don't know that -- we've never really discussed it. I  
17 don't know that he thinks that anybody that's convicted  
18 of capital punishment needs to have the death penalty.  
19 I don't know. You know, it's not really something we've  
20 ever discussed.

21 Q. Never discussed it?

22 A. No. Other than I know he is in support of it,  
23 supports capital punishment, you know, but I don't --  
24 you know, it's one of those I think it's easy to say  
25 that you are in support of it, but I can tell you right

1 now that I would -- just sitting in this position, that  
2 it actually scares me. I mean, I will do my best to be  
3 fair and impartial as I possibly can and try and come up  
4 with the right decision.

5 Q. I know you would.

6 A. Yeah.

7 Q. I know you would. Do you think that police  
8 officers make mistakes?

9 A. Yes, sir.

10 Q. I mean, do you know any that don't make  
11 mistakes?

12 A. No, sir.

13 Q. Not demeaning them in any way.

14 A. No, no, no. I mean, nobody is perfect.

15 Q. You know that there have been problems -- I  
16 know you know there have been problems with people being  
17 convicted of capital murder that didn't commit the  
18 crime.

19 A. Yes, sir. There's been cases overturned that  
20 I'm aware of.

21 Q. We're going to plead not guilty in this case,  
22 so we have to talk to you about capital punishment  
23 stuff --

24 A. Yes, sir, I understand.

25 Q. -- because as you know, there is only one jury.

1 A. Yes.

2 Q. We don't have one jury for guilt-innocence and  
3 another jury for punishment in case we lose.

4 A. Yes, sir.

5 Q. I don't want to telegraph to you or make you --  
6 I'm not as worried about you as the other jurors, but I  
7 want to make sure that you and I connect on this. I'm  
8 not thinking I'm going to lose this case and that's why  
9 I'm talking to you about punishment.

10 A. Yes, sir.

11 Q. I'm planning to do my very best. I don't know  
12 what the jury is going to decide. And you know that we  
13 weren't there, we're not witnesses.

14 A. Yeah.

15 Q. The D.A.s weren't there, they are not  
16 witnesses.

17 A. No, sir.

18 Q. So, neither of us know what the jury is going  
19 to decide on guilt or innocence.

20 A. No, sir.

21 Q. But we have to talk to you about punishment.  
22 I'm going to get back to that in a minute, but I want to  
23 talk to you about guilt or innocence now.

24 A. Yes, sir.

25 Q. You know the case allegedly happened in '92.

1           A.    Yes, sir.

2           Q.    Do you -- I'm sure you realize that probably  
3 makes it a little harder for the State to prove a case  
4 that happened in '92. Maybe not always, but just in  
5 terms of generally. You would think it would be a  
6 little bit harder to prove one from '92 than it would be  
7 from like 2012.

8           A.    I would think so.

9           Q.    Just because it's harder to find the witnesses,  
10 harder to get the witnesses, may not remember things,  
11 what's happened to the evidence.

12          A.    Yes, sir.

13          Q.    Do you think that the police sometimes misplace  
14 or intentionally or unintentionally mess up the  
15 evidence?

16          A.    I would hope they wouldn't do it  
17 unintentionally {sic}, but, I mean, I have known  
18 evidence that has come up missing. I've known -- we've  
19 had -- not in LaPorte that I know of, but I know other  
20 agencies had people that -- had people steal evidence  
21 out of an evidence locker.

22          Q.    You know about the HPD Crime Lab, you followed  
23 that from years go?

24          A.    I didn't follow it, but I know there was some  
25 problems there, yes, sir.



1           Q.    Okay.  Now, what I want to ask is would you  
2 be -- I don't know how to phrase this.  Would you cut  
3 the State some slack and maybe not require them to come  
4 up all the way to their burden of beyond a reasonable  
5 doubt because the crime allegedly happened so long ago?

6           A.    No, sir.

7           Q.    I didn't think you would, but you see why I ask  
8 that question?

9           A.    No, no.

10          Q.    I mean, that isn't what the law would  
11 contemplate.  They have to prove it to the same burden  
12 that they have to prove it no matter when it happened --

13          A.    Yes, sir.

14          Q.    -- beyond a reasonable doubt?

15          A.    Yes, sir.

16          Q.    Whatever that means to you.

17          A.    Yes, sir.

18          Q.    Okay.  And you know you decide --

19          A.    Yes, sir.

20          Q.    -- what proof beyond a reasonable doubt is.

21          A.    Yes.  I was surprised that there wasn't a  
22 better definition than what there was, but...

23          Q.    Well, we had a definition before.  I mean,  
24 you've been in law enforcement long enough probably to  
25 know that.  We had a definition for quite a long time,

1 but they did away with it.

2 A. Yeah.

3 Q. And said that they need to leave it up to the  
4 jury to decide, each individual juror to decide what  
5 proof beyond a reasonable doubt is for them.

6 A. Yes, sir.

7 Q. It is fairly hard to define. We had another  
8 definition years and years ago, but now we have no  
9 definition, so...

10 A. Yeah.

11 Q. And so, that's the way it is.

12 A. Yes, sir.

13 Q. So, if you are selected to serve,  
14 hypothetically, on a capital murder jury, and you heard  
15 the evidence in the case and you went back to deliberate  
16 with the other jurors and you weren't convinced in your  
17 own heart and own mind that the person on trial was  
18 guilty and you listened to the other jurors and you had  
19 to listen to the evidence and to the State's attorneys,  
20 but after thinking about the whole thing, you may think  
21 the person on trial might have done it, or maybe  
22 probably done it -- did it, but you are not convinced  
23 beyond a reasonable doubt, would you find him not  
24 guilty?

25 A. Yes, sir.

1 Q. I know that you know you are supposed to say  
2 that, but could you really do it?

3 A. I think so.

4 Q. Okay. All right.

5 A. I mean, it's one of those fair is fair, you  
6 know. And if I was -- I put everything as if I was in  
7 that case, I would want everybody to be as honest and  
8 upfront as they could be.

9 Q. What if a big part of the case -- that's an  
10 improper question. I can't go into anything that's even  
11 potentially part of this case.

12 A. Yes, sir.

13 Q. Can't make --

14 A. Okay.

15 Q. -- hypotheticals on that without tipping you  
16 off about something.

17 A. Okay.

18 Q. Has there been anything that happened in your  
19 life that you think I ought to know about that might  
20 affect how you'd vote on guilt or innocence or on  
21 punishment?

22 A. No, sir.

23 Q. Any terrible crimes that you've either observed  
24 or followed or been a part of or any event that affected  
25 you personally or somebody that you know or love that I

1 probably ought to know about?

2 A. No, sir, nothing I can think of.

3 Q. Well, I'm glad to know that.

4 A. I'm glad to be able to answer it that way.

5 Q. Now, I want to talk to you quickly -- I'm kind  
6 of moving into punishment.

7 A. Yes, sir.

8 Q. There is this Question No. 70, which if I were  
9 the person designing these questionnaires I probably  
10 would not put this in here.

11 MR. CORNELIUS: Judge, can he see your --

12 THE COURT: Yes. I have the times written  
13 on the front here. I will turn the page. It's Question  
14 No. 70, you said?

15 MR. CORNELIUS: Yes. And that's all I need  
16 him to look at.

17 THE COURT: I will hand it to you  
18 (indicating).

19 Q. (By Mr. Cornelius) Page 11, yes, sir.

20 I want to read it out loud while you are  
21 reading because that way it goes into the record. Do  
22 you follow what I'm saying.

23 A. Yes, sir.

24 Q. She's writing this down.

25 Please state whether you more closely agree

1 or disagree with the following statements. I want you  
2 to go down to number F.

3 A. Okay.

4 Q. A sentence of life in prison for someone  
5 convicted of capital murder may or may not be  
6 appropriate as it depends on the facts and  
7 circumstances. And you said: I agree.

8 A. I'm sorry. That was a mistake.

9 Q. No, no. That's not a mistake.

10 A. No. I --

11 Q. Read it again. That's the right answer.

12 A. A sentence of -- okay. I still agree with  
13 that. I think there is different circumstances.

14 Q. Right. If we -- if that were the only question  
15 on No. 70, everything would be fine. And everything is  
16 fine anyway on No. 70, but I want to talk to you about  
17 it for a second.

18 A. No problem.

19 Q. That's the most important part of No. 70 in my  
20 mind and you are absolutely dead-certain correct. But  
21 let's go up to number A. A and B are, frankly, the same  
22 question, one is written positively and one is written  
23 negatively. It's basically asking you or asking any  
24 juror if life is enough punishment and seeing what you'd  
25 say on that. And you're saying you disagree that life

1 is enough punishment in A, but you are probably saying  
2 you disagree because it might not be in every case  
3 enough.

4 A. Yeah.

5 Q. And the other one, life is not enough, and you  
6 agreed, but you're probably not saying in every case  
7 it's not enough, you are just saying in some cases it's  
8 not enough. Right?

9 A. Yes, sir. My feeling on that -- and if I  
10 answered it wrong, that's -- each case is different.

11 Q. Okay.

12 A. I mean, that would be the same on any case that  
13 I would file in our court. Each case is different, you  
14 know. I mean, I file charges and after listening to  
15 everybody talk in court and everything, and if they were  
16 found not guilty or not fined that didn't hurt my  
17 feelings at all.

18 Q. Okay. Let's go to D. This is the one I want  
19 to ask you about. And D and E are basically the same  
20 questions. We'll just look at D.

21 A. Okay.

22 Q. A sentence of life in prison for someone  
23 convicted of capital murder is wasteful to society  
24 because we have to support that person in prison with  
25 taxpayer money. And you said you disagreed with that.

1           A.    That it's wasteful?  If it doesn't meet all the  
2 three questions, just knowing the three questions now  
3 that the gentleman or whoever is -- doesn't actually  
4 deserve the death penalty, then why would it be  
5 wasteful?

6           Q.    Right.  So, you are -- tell me if I'm right.  
7 What you're saying is by picking that disagree is that  
8 you are not going to give somebody a death penalty just  
9 because it's expensive to keep them in prison?

10          A.    No, sir.

11          Q.    Okay.  That's a great answer for me.  I'm just  
12 wanting --

13          A.    No, sir.

14          Q.    -- to talk to you about it.

15          A.    That -- I'm sorry.  That shouldn't enter into  
16 the decision.

17          Q.    Okay.  When you answered that questionnaire --  
18 as you and I are sitting here now talking about it, have  
19 you -- are you just saying that I don't care what it  
20 cost, I'm not going to give somebody -- I don't care  
21 whether it's more expensive to do the appeals and the  
22 process and to try to execute them or more expensive to  
23 keep them in prison, I don't really know which one is  
24 the most expensive and I don't really care, I'm not  
25 going to give them the death penalty just because

1 they'll have to be in prison and we'll have to support  
2 them?

3 A. No, no.

4 Q. That is what you're saying, right?

5 A. That is what I'm saying, yes, sir. You know,  
6 it's the taking of somebody's life. And I don't think  
7 that's really got a price tag on it, sir.

8 Q. All right. But do you have any knowledge as to  
9 whether it's more expensive to go through the whole  
10 process of prosecuting someone for the death penalty,  
11 giving the death penalty, doing the whole appellate  
12 process, which you know from your experience it takes a  
13 long time before somebody actually gets executed.

14 A. Yes, sir.

15 Q. You know that, right?

16 A. Yes, sir.

17 Q. And during that long period of time, they're  
18 having to be paid for in prison anyway.

19 A. Yes, sir.

20 Q. And so, by the time they get executed, which I  
21 don't know if you know what the average -- and I'm not  
22 going to tell you, but you know it's a long time.

23 A. Uh-huh.

24 Q. It's only from that point that the society  
25 would say -- even the first dollar in making this



1 comparison. And so, there are people -- I will just  
2 tell you this. I think everybody agrees. There are  
3 people on both sides of that saying it's actually more  
4 expensive to execute them than it is to support them for  
5 the rest of their life. Plus there are statistics as to  
6 how long people can live in prison and how long people  
7 have lived in prison, and stuff like that. You probably  
8 know more about that, prison conditions, than a normal  
9 person. But do you have -- have you ever made any study  
10 of that yourself or read anything or been told by an  
11 expert about costs?

12 A. No, sir.

13 Q. Okay. All right. That's a long way --

14 A. What you said, though, it sounds more like --  
15 I'm just guessing, but it sounds like it's more to have  
16 somebody on the death penalty than it would be to  
17 support them in prison.

18 Q. It doesn't cost very much to support somebody  
19 in prison.

20 A. I wouldn't know, but I know none of this is  
21 cheap.

22 Q. Okay. All right. Now I want to talk to you --

23 MR. CORNELIUS: How much time do I have,  
24 Judge?

25 THE COURT: You began at 46. So, you still

1 have about -- a little less than ten minutes, eight  
2 minutes.

3 MR. CORNELIUS: Great.

4 Q. (By Mr. Cornelius) I want to talk you about the  
5 three questions. Question No. 1 is on the board.

6 A. Yes, sir.

7 Q. I'm just going to be straight out up front with  
8 you about what I'm afraid of.

9 A. Yes, sir.

10 Q. And I'm afraid that any juror, not just you --  
11 and I'm not picking on you.

12 A. No. I understand.

13 Q. Although the law enforcement full career scares  
14 me --

15 A. Yes, sir.

16 Q. -- somebody that works in law enforcement on my  
17 jury. And, you know -- you know that I'm going to try  
18 this case -- whether you are on the jury or not, I'm  
19 going to try this case to a death-qualified jury.

20 A. Yes, sir.

21 Q. That means every single person on the jury will  
22 have testified under oath that they believe in capital  
23 punishment and they can do it.

24 A. Yes, sir.

25 Q. Some people have said they believe in it, but

1 they can't do it.

2 A. Yes, sir.

3 Q. They're not going to ever be on the jury.

4 A. Yeah.

5 Q. When you try one of your animal cruelty cases,  
6 or whatever, the State doesn't get to have a jury that's  
7 death-qualified on that. That's not an issue. But I am  
8 unfortunate enough to get a death-qualified jury to  
9 defend my client in front of.

10 A. Yes.

11 Q. So, I don't want to have lost the case before I  
12 started.

13 A. I understand.

14 Q. One of the questions that I ask anybody that I  
15 think has a chance of making the jury is this: If you  
16 find somebody guilty of capital murder -- and earlier  
17 when we were talking about this, I asked you to tell me  
18 about how -- a case where you wouldn't give him the  
19 death penalty. What you said back to me were situations  
20 where it was an accident, or, you know, where he didn't  
21 anticipate the person would be killed. That's not what  
22 I'm talking about now. Those people wouldn't be  
23 convicted of capital murder.

24 A. Yes, sir.

25 Q. I'm talking about a case where --

1 hypothetically where you and the other jurors hear the  
2 evidence and are all convinced beyond a reasonable doubt  
3 that the person on trial -- not this guy, some other  
4 person on trial -- is guilty of capital murder. Okay?  
5 And so, knowing that he committed a capital murder,  
6 you've just convicted him of capital murder in my  
7 hypothetical.

8 A. Uh-huh.

9 Q. You are being asked this question: Is there  
10 the probability -- not a guaranteed certainty, but is  
11 there the probability -- something more than a  
12 possibility and less than a certainty, but a  
13 probability, is it probable that this person would be a  
14 continuing threat to society, either in prison or on the  
15 outside. And there are people that would say: What  
16 somebody has done in the past is the greatest indicator  
17 of what they will do in the future. And so, I'm  
18 wondering from you -- and I have to accept your answer,  
19 whatever it is -- if you see yourself now in that  
20 position, having actually convicted someone of capital  
21 murder, that you can actually ever vote a "no" to that  
22 question, or will you always say: Yeah, I'm afraid that  
23 if I convicted him, there is at least the probability  
24 that he will be a continuing threat?

25 A. It would depend upon the background.

1 Q. Okay.

2 A. And, I mean, yeah -- I mean, if -- you know, I  
3 have no clue what any defendant, not just yours, would  
4 say, you know, what they have done up to that point,  
5 what they have done since that point. That would have  
6 to play a factor in it.

7 Q. So, I'm not trying to commit you to what you'd  
8 have to have or not have to have.

9 A. Yeah, yeah.

10 Q. Is there a possibility you could say "no" --

11 A. Yes. I feel so.

12 Q. -- to that question?

13 You don't have a problem with that at all?

14 A. No. Like I said, nothing -- how do I say this?  
15 There is mitigating factors in everything.

16 Q. We'll get to mitigation.

17 A. Okay. I know, but that's --

18 Q. This is sort of an empirical thing. This is  
19 not mitigation.

20 A. Okay. Sorry.

21 Q. I'll go straight to mitigation because I think  
22 you understand the law of parties and --

23 A. Yeah.

24 Q. That Question No. 2 is essentially a further  
25 application of the law of parties, but a more committing

1 application.

2 A. Yes, sir.

3 Q. So, I don't care about it for this purpose.

4 This is my last thing I'm going to go over with you.

5 A. Okay.

6 Q. To get to this mitigation question --

7 A. Yes, sir.

8 Q. -- you will have -- and I'm talking about  
9 hypothetically next year or something -- you will have  
10 convicted the person that's on trial.

11 A. Okay.

12 Q. Right? You wouldn't be in punishment if you  
13 hadn't convicted him.

14 A. Yeah.

15 Q. You would have convicted the person on trial  
16 and you will have answered Special Issue No. 1 "yes,"  
17 there is the -- whatever it would take, there is the  
18 probability he's going to be a continuing threat.

19 A. Yes.

20 Q. You and the other eleven members have decided  
21 that. You will have answered Special Issue No. 2 "yes,"  
22 we believe beyond a reasonable doubt that he either  
23 personally killed that person or intended that person to  
24 be killed or knew the person was going to be killed and  
25 just didn't care, you know --

1 A. Yes, sir.

2 Q. -- anticipated it.

3 A. Yes, sir.

4 Q. So, that person is on his way to a death  
5 sentence unless the jury decides to bail him out for  
6 whatever reason. And the Supreme Court, when they  
7 mandated this, the Supreme Court of the United States,  
8 called it mitigation.

9 A. Yeah.

10 Q. The theory behind this is to let a jury who has  
11 convicted someone answer the other questions in a way  
12 where that person is going to get a death penalty, to  
13 step back, take a breath, re-commit themselves to  
14 looking at the evidence, and then decide: Is there some  
15 reason why the case ought to be mitigated to a life  
16 sentence rather than a death sentence. Could you ever  
17 do that?

18 A. Yes, sir, I think I can.

19 Q. You really could?

20 A. Yes.

21 Q. I mean, it's hard to say --

22 A. Yes.

23 Q. You have not done it yet, but...

24 A. I mean -- I mean, until I see it, I can't tell  
25 you what I'd say one way or the other, but, yeah, I

1 think I could. It's one of those -- because when you  
2 are at that point you would need to -- I would want to  
3 look at everything, I would want to make sure that there  
4 wasn't something I missed or anything that would put  
5 somebody to death when they didn't need to be put to  
6 death.

7 Q. Okay. Do you have any questions? Those are  
8 all my questions, but if there is something bothering  
9 you or any question you have, now is the time.

10 A. No, sir. No. Fascinated by the process, but  
11 that's -- no. I'm good, I think.

12 MR. CORNELIUS: Pass the juror, Judge.

13 THE COURT: Sir, if you'll step out this  
14 door right here to the side. The deputy will assist you  
15 because I think it's locked. We'll discuss you and be  
16 right back with you.

17 VENIREPERSON: Okay.

18 (Venireperson exits courtroom)

19 THE COURT: As to Juror No. 70, Clarence  
20 Anderson, what says the State?

21 MR. WOOD: The State accepts Juror No. 70,  
22 Mr. Anderson.

23 THE COURT: Okay. And the defense?

24 MR. CORNELIUS: One second, Judge, if I  
25 might.



1 THE COURT: Very good.

2 (Pause)

3 MR. CORNELIUS: We're going to exercise a  
4 peremptory, Judge.

5 THE COURT: All right. Granted. Juror  
6 No. 70, Clarence Leroy Anderson, is excused on a defense  
7 peremptory challenge.

8 You may bring him back in, deputy.

9 THE BAILIFF: Yes, Your Honor.

10 (Venireperson enters courtroom)

11 THE COURT: Okay. Mr. Anderson, you are  
12 excused as a juror in the case. I really appreciate you  
13 coming down and sharing all your feelings.

14 VENIREPERSON: Thank you, Your Honor.

15 THE COURT: All three days with us.

16 VENIREPERSON: Yes, ma'am. Thank you.

17 THE COURT: It's a lot of effort to make.  
18 And we could not have this process without involved  
19 citizens like yourself.

20 So, I want to release you from all of the  
21 instructions that you received orally from me and in  
22 writing.

23 VENIREPERSON: Yes, ma'am.

24 THE COURT: And so, you can talk with  
25 anyone you want about the case. If you need something

1 for work today, Deputy Perry can get that for you. It  
2 will excuse you through 5:00 today.

3 VENIREPERSON: Yes.

4 THE COURT: Also we can get you a bus pass.

5 VENIREPERSON: I don't need a bus pass.

6 Thank you, Your Honor.

7 THE COURT: Thank you. Have a good day.

8 THE BAILIFF: Have a good day, sir.

9 (Venireperson excused)

10 THE COURT: We have 69 back there, but  
11 we're still missing 64, correct?

12 THE BAILIFF: I couldn't get ahold of her.  
13 She only had a work number on there. I left a message  
14 and I haven't heard back from her.

15 THE COURT: She's not there?

16 THE BAILIFF: No. He had her coming at  
17 1:00.

18 THE COURT: Okay. So, I'm going to ask  
19 both sides again: Is it the agreement that we take  
20 Juror No. 69 out of the turn, Patricia Rivera, and do  
21 her next? Is that okay with the State?

22 MR. WOOD: No objections.

23 MR. CORNELIUS: No objections from the  
24 defense.

25 THE COURT: Mr. Obel Cruz-Garcia, is it

1 your agreement that we proceed on Juror No. 69, Patricia  
2 Rivera, out of order? In other words, we're skipping  
3 Nancee Pyper at this point. Is that your agreement?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Very good.

6 Call her in, Deputy.

7 (Venireperson sworn)

8 **PATRICIA RIVERA LOPEZ, VENIREPERSON NO. 69,**  
9 was called as a prospective juror, and testified as  
10 follows:

11 **VOIR DIRE EXAMINATION**

12 **BY THE COURT:**

13 Q. Good afternoon, Ms. Rivera.

14 A. Good afternoon.

15 Q. You can have a seat.

16 THE COURT: Sorry. Go ahead, Deputy.

17 THE BAILIFF: Speak directly into the  
18 microphone.

19 Q. (By The Court) And your name is Patricia  
20 Rivera?

21 A. Yes.

22 Q. You have it also listed as Patricia Lopez?

23 A. Correct.

24 Q. Are you Lopez or Rivera?

25 A. Now I'm Lopez. I'm married.

1 Q. Okay. Now you are Lopez. Rivera was your  
2 maiden name. So, we're going to call you Patricia  
3 Rivera Lopez.

4 A. That's fine.

5 Q. You are Juror No. 69 from the general venire  
6 panel that was called over in the State of Texas vs.  
7 Obel Cruz-Garcia?

8 A. Correct.

9 Q. And you heard my general voir dire on Monday of  
10 this week, correct?

11 A. Yes.

12 Q. This is a continuation of that process, voir  
13 dire. It's when the lawyers individually get to speak  
14 with you. I'm going to allow a lawyer from each side to  
15 have half an hour with you. I'm holding them to that  
16 time.

17 A. Okay.

18 Q. During that time, they will ask you questions  
19 over many of the same topics that I discussed, but it  
20 will be more personal, directed towards your feelings on  
21 the law. And you are sworn to tell the truth, but there  
22 is really no right or wrong answers. It's just the  
23 truth from your own heart. And we need to know that so  
24 that we can make sure that we seat a fair jury. If  
25 there is any questions they ask that you don't

1 understand, please ask them to rephrase them. Okay?

2 A. Okay.

3 Q. I do have three questions before we get going  
4 here. The first is: Do you have any religious,  
5 personal, or moral reasons why you would be unable to  
6 sit on a jury where the death penalty is a possible  
7 punishment?

8 A. No.

9 Q. Do you know of any reason why you could not be  
10 fair and impartial to both sides in a criminal case?

11 A. No.

12 Q. Have any of your answers from the questionnaire  
13 that you completed on Friday, May 31st changed?

14 A. No.

15 Q. Okay. We all have a copy of your  
16 questionnaire. So, if at any time you need to see that  
17 just to see how you answered a question, please ask for  
18 it. I'm going turn you over to Ms. Tise.

19 THE COURT: And it is 11:18 -- 11:19.

20 Excuse me.

21 MS. TISE: Thank you, Judge.

22 VOIR DIRE EXAMINATION

23 BY MS. TISE:

24 Q. Good morning.

25 A. Good morning.

1 Q. Thank you for coming back to see us today. I  
2 know you really didn't have a choice.

3 A. Yeah.

4 Q. But we still appreciate it.

5 A. That's funny.

6 Q. My name is Natalie Tise and this is Justin  
7 Wood. He is my co-counsel on this case. And we work  
8 for the State of Texas. We're the prosecutors. Okay?

9 A. Okay.

10 Q. I want to talk to you a little bit in general  
11 about some things that are on your questionnaire and  
12 just get your general opinion on capital punishment and  
13 criminal cases and that kind of thing.

14 A. Okay.

15 Q. I want you to know this isn't a test. You  
16 know, your answer is your answer. And just be honest.  
17 Okay?

18 A. Okay.

19 Q. Just relax and be honest like you would if you  
20 were talking to somebody you knew. Okay?

21 A. Okay.

22 Q. When you got this questionnaire last week, I  
23 guess a week ago from today, and started filling it out,  
24 I guess it became pretty obvious pretty quick that this  
25 is a death penalty case.

1           A.    Yes.

2           Q.    What went through your mind?  How did you react  
3 to that?

4           A.    I really didn't have anything to say because I  
5 haven't heard what happened, why people did it, or if  
6 they did it.  I was just answering the questions.

7           Q.    Okay.  So, you just kind of took it as just an  
8 exercise and answered the questions asked.  No real  
9 feelings one way or the other came over you?

10          A.    No, ma'am.

11          Q.    And the reason I ask that is some people will  
12 tell us:  Wow, when I saw this, it just gave me a  
13 feeling of anxiety or made me nervous, or something like  
14 that, but that didn't happen in your particular case?

15          A.    No.

16          Q.    Okay.  And had you really ever thought about  
17 what your opinion was on the death penalty prior to that  
18 Friday?

19          A.    Actually, three weeks ago I was watching TV and  
20 they were talking about that.  So, it just caught my  
21 mind.  I'm not really against it or for it, to do it.  
22 It just all depends on what happened for me.  I need to  
23 hear what's going on and see what I think of the person.

24          Q.    And so, what was it that you were watching on  
25 TV that brought this up and made you think about it?

1           A.    It was just a program in Spanish on Univision.  
2   And they were talking about lawyers that are against it  
3   and lawyers that are for it.

4           Q.    And did the program seem to take a position one  
5   way or another?

6           A.    It just put me in between.   Because I agree  
7   with some of the stuff the person who agreed on and then  
8   I was also thinking about the other side, which is they  
9   don't believe in that.

10          Q.    Okay.   So, what kind of things were said in the  
11   program that you felt like you agreed with?

12          A.    I think that if you do something, you need to  
13   pay for it; but it just all depends on -- like she spoke  
14   about on Monday, on the evidence.   And then I cannot  
15   judge someone right then and there.   I need to hear what  
16   happened, the story, and then make my mind up.

17          Q.    That's a really good position.   And really,  
18   that's the position that the law requires you to take,  
19   to be open-minded and listen to the evidence and make  
20   your decision from there.   And what I hear you saying is  
21   that's how you look at it.

22          A.    Yes.

23          Q.    Okay.   Was there anything about the program  
24   that stuck out in your mind where it bothered you or  
25   made you think negatively towards the death penalty?



1 A. No.

2 Q. Okay. How long would you say you've felt  
3 favorably towards the death penalty as a possible  
4 punishment in certain types of cases?

5 A. Never.

6 Q. So, was it just something you really first  
7 thought about three weeks ago when you watched the  
8 program?

9 A. Pretty much, yes.

10 Q. Okay. Do you know how members of your family  
11 feel about it, people that are close to you?

12 A. Some are against it and some are in favor.

13 Q. Okay. Anything about that that you think might  
14 cause you some concerns if you are a juror? Anybody in  
15 your family who might pressure you or --

16 A. Well, no because whatever happens here is just  
17 between me and all of you. Nobody else has to know  
18 about it.

19 Q. You are absolutely right. This is not  
20 something that you are really allowed to discuss outside  
21 of what you hear in the courtroom until after the case.

22 A. Some people tell me, like before all of this,  
23 that I should be against it or for it. I just listen to  
24 what they are saying, not what I -- I don't have to tell  
25 them what I believe in this case or in other matters in

1 my life.

2 Q. That's absolutely right. And you are just  
3 recently married. Do you know how your husband feels  
4 about the death penalty?

5 A. He is the same as I am. He needs to hear the  
6 evidence. We've spoken about this because of the  
7 program. So, he told me the same things that I believe  
8 in.

9 Q. Do you think the punishment should fit the  
10 crime? What would be your opinion of that statement?

11 A. I don't understand.

12 Q. When you're talking about needing to hear the  
13 evidence and hearing the evidence of the crime, hearing  
14 evidence about the defendant, good or bad, do you think  
15 the punishment should fit the evidence in the case?

16 A. Yes.

17 Q. Okay. And if it's the death penalty, then it's  
18 the death penalty, if that's where the evidence leads  
19 you?

20 A. Yes.

21 Q. I want you to take a look across the courtroom.  
22 Obel Cruz-Garcia is sitting right there in the gold tie  
23 with the headset on.

24 A. Uh-huh.

25 Q. He is the defendant in this case. And at the

1 end of the trial, Justin and I are going to ask you to  
2 follow the law and the evidence, wherever it leads you,  
3 and if it leads you to answer those special issues that  
4 the Judge talked to you about in the way that it leads  
5 to the death penalty, will you be able to do that  
6 knowing that Mr. Cruz-Garcia is a living, breathing  
7 human being just like me and you?

8 A. Yes, I would.

9 Q. He might have family who is here to support  
10 him, he might have people who love him.

11 A. Yes, I understand.

12 Q. Will you be able to do it?

13 A. Yes.

14 Q. Thank you.

15 I want to ask you some things that are on  
16 your questionnaire.

17 A. Okay.

18 Q. One of the things that you talked about -- and  
19 if you need to look at your questionnaire, I think we  
20 can maybe find you a blank one if you want to refresh  
21 your memory.

22 A. Okay.

23 THE COURT: I've got the cover page, but  
24 the rest of it (indicating).

25 Q. (By Ms. Tise) On Page 3 at the bottom, one of

1 the things that you said is: I believe if you do  
2 something wrong, you need to man up to the consequence.

3 A. Yes.

4 Q. Okay. What did you mean by that?

5 A. I mean not just this particular case, but  
6 anything. Whatever you do in your life, good or bad,  
7 it's going to have a consequence.

8 Q. Okay.

9 A. If you do something great, you're going to have  
10 an award. It doesn't matter what you do. If you do  
11 something bad, then you are not going to get an award.  
12 You might get something else. Not just in this  
13 particular case, but in anything that anybody decides to  
14 do in your life.

15 Q. Okay. You also -- on Page 9 you were asked  
16 what you felt like the objective of punishment for  
17 criminal offenses was.

18 A. I really didn't understand that question.

19 Q. Okay.

20 A. I just wrote what I thought an answer would be.

21 Q. Okay. And can you tell me what you -- what you  
22 wrote? Because I wasn't able to read some of the words.  
23 So, is it because all crimes you see are the same?

24 A. It needs to stop. Like, we see something like  
25 on what I was thinking, like the shooting, one shooting

1 started and then like this whole massive start --  
2 shootings are shootings and then now like it's going  
3 to -- the firemen that died. And then everyone is  
4 starting fires. So, I don't know if that's people that  
5 are doing it or not, but I believe that everybody needs  
6 to see how we're able to stop crime in this world. And,  
7 I mean, killing somebody, hitting somebody, it doesn't  
8 matter, robbing. That's what I believe. There needs to  
9 be something for that to be stopped.

10 Q. Okay. So, the way I'm reading this is you're  
11 concerned about crime and violence in our society.

12 A. Yes.

13 Q. Is that fair?

14 A. Yes.

15 Q. And you think that it needs to be addressed?

16 A. Yes.

17 Q. Okay. I think that's a legitimate concern to  
18 have and a legitimate thought about it. The one thing I  
19 want to make sure, though, is if you -- would you agree  
20 with me that capital punishment is not always the way to  
21 stop it, it's going to depend on the facts of the case?

22 A. Correct.

23 Q. Okay. So, there is different types of  
24 punishment and depending on the type of crime  
25 committed --

1           A.    Yes.

2           Q.    -- and other factors, that would control your  
3 decision on whether or not you would get the death  
4 penalty?

5           A.    Yes.

6           Q.    Okay. One of the things that you said in your  
7 questionnaire -- and looking at Page 10, you said: Any  
8 person, man or woman, young or old, who commits capital  
9 murder should pay with his own life. Okay. And a lot  
10 of times people answer these questions before they  
11 really know a lot. I mean, you are forced to. You are  
12 given it before you really know. You have not heard  
13 from the Judge about how the system works.

14                       So, I'm concerned about your -- it says:  
15 Any person. And it's the way the question is written.  
16 So, it kind of puts you in a position of "yes" or "no"  
17 to something extreme, but now that you know how capital  
18 murder works and how the trial process works, would you  
19 agree with me that that's going to depend on the  
20 situation, or do you feel like if we present evidence  
21 and you convict someone of capital murder, you are  
22 automatically going to give them the death penalty?

23           A.    No. I'm in between.

24           Q.    Okay. So, you would -- you would want to hear  
25 other evidence to make that decision?

1 A. Yes.

2 Q. Okay. It also asks you -- it says: Capital  
3 punishment has never been effective in preventing crime.  
4 And you agreed with that. What did you mean by that?

5 A. Well, what I understand of that question is  
6 like I have heard a lot of cases that there has been  
7 capital murder, but that's not stopping either other  
8 people that are still killing other people.

9 Q. Right.

10 A. So, I agree that it's not something that is 100  
11 percent or 90 percent or 10 percent it's going to  
12 reflect on anyone else because it's still happening.

13 Q. Right. Do you believe that capital punishment  
14 does prevent that one person from committing other  
15 crimes once the punishment is --

16 A. Well, if they do capital murder, they are not  
17 going to do it again, but they are never going to learn  
18 what they did as well. So, it's half and half.

19 Q. Do you think that would affect you, that  
20 position would affect you at all in the decisions that  
21 you make in the case --

22 A. No.

23 Q. -- how much you think it deters other people in  
24 society?

25 A. No. Because we are only talking about one

1 specific person at this time.

2 Q. Okay. Fair enough.

3 Also No. 6, it says: Life in prison is  
4 more effective than capital punishment. And you said  
5 "yes."

6 A. I agree on that depending on the evidence.

7 Q. Okay. Tell me a little bit more about your  
8 feelings on that.

9 A. I believe that -- like I said, I'm halfway in  
10 it or against it, because depending on what type of case  
11 it is, then I believe that that person should not be  
12 dead, they should pay life, like without having freedom.  
13 Because once they're dead, they're not going to be here  
14 so it's not going to be -- they killed somebody, he's  
15 dead, oh, well, that's it. And I don't think that's the  
16 way it should be, not the easy way, depending on the  
17 case.

18 Q. So, you think the death penalty is the easy  
19 way?

20 A. Yes, sometimes.

21 Q. So, you also said "sometimes." So, tell me  
22 what the opposite side of that would be.

23 A. Like I said, it's all depending on what type of  
24 case it is.

25 Q. Okay.



1           A.    What the evidence is. That's why I'm saying  
2 sometimes. Because I'm 50 percent against and 50  
3 percent not against it, so...

4           Q.    Okay. So, I didn't ask you this question at  
5 the beginning, but when we talked about where you stood  
6 on capital punishment, where would you put yourself on a  
7 scale of one to ten? If you would -- one would be  
8 absolutely against the death penalty, and ten would be  
9 absolutely in favor of the death penalty.

10          A.    Five.

11          Q.    But I'm going to take five off the table. So,  
12 where would you put yourself?

13          A.    Six.

14          Q.    Okay. And if you were in charge in the state  
15 of Texas and you could make all the laws, would you have  
16 the death penalty? Would it be part of the laws if you  
17 were the boss?

18          A.    I don't know.

19          Q.    Okay. What would be your thinking? What would  
20 be the -- your struggle there? What would be your  
21 thoughts on both sides of that position?

22          A.    I'm just thinking what if one of my family  
23 members would be there.

24          Q.    Uh-huh. Yeah. Be charged with a capital  
25 crime?

1 A. Yes.

2 Q. And I see you are getting emotional about that.  
3 Do you have some personal experience there you want to  
4 tell us about?

5 A. No.

6 Q. Okay. Obviously, that's an important  
7 consideration. You want to be fair.

8 A. Yes.

9 Q. And you would want someone you cared about to  
10 be treated fair.

11 A. Yes.

12 Q. You know, you're very young. And I know this  
13 is -- we're asking you about -- but you also seem like a  
14 person who has really thought about things. But there  
15 are a lot of people who will come here and tell us: You  
16 know, I agree with the death penalty, I agree with how  
17 the process works, and I like -- I see myself as a  
18 law-abiding person, and I like to follow the law, but  
19 don't put me in the position where I have to make this  
20 decision. We hear that a lot. Some people will say  
21 that as soon as they get up there. Do you feel that  
22 that's you?

23 A. Yes.

24 Q. Okay. And I'm noting that you are crying and  
25 you are visibly emotional and I'm not trying to make you

1 uncomfortable.

2 A. No, no. I'm fine.

3 Q. But, you can support the death penalty and  
4 support the law and be concerned about crime and  
5 punishment, but at the same time feel like you are not a  
6 person who wants to be involved in this process, where  
7 you are the one who has to make the decision.

8 A. Correct.

9 Q. That is okay. It's absolutely okay. I just  
10 need you to be honest about it and tell us. Because if  
11 you are chosen to be a juror, you have to take an oath  
12 to follow the law. And if you feel emotionally that  
13 would be something you could not do, this is the time to  
14 tell us before you are put in the position.

15 A. That's true.

16 Q. Okay. So, that's true that --

17 A. I would be able to follow it, but I'm still  
18 going to feel -- I'm a very emotional person.

19 **VOIR DIRE EXAMINATION**

20 **BY THE COURT:**

21 Q. I couldn't hear. You would be able to  
22 follow --

23 A. I would be able to follow -- I'm -- I would be  
24 able to follow the law because that's what you were  
25 talking about on Monday and how things work, but I -- I

1 could follow the law on how to go ahead with this  
2 process, but that doesn't mean that I'm still not going  
3 to feel emotional about it.

4 Q. Okay. Let me question her a little bit.

5 Ms. Tise's question was would you be able  
6 to take the oath to follow the law and follow the  
7 evidence, and wherever that evidence leads you to. So,  
8 if the evidence leads you to answer the questions in a  
9 manner that you know would result in the death penalty  
10 being handed down to a defendant, do you feel that your  
11 emotions are so strong or your feelings are so strong  
12 that you would not be able -- that that would interfere  
13 and you would not be able to --

14 A. No. I would be able to do it. Like, I would  
15 be able to do it, but inside I would still feel  
16 emotional, but I will be able to do the right thing on  
17 what the evidence is given to me.

18 Q. Very good.

19 THE COURT: You can proceed, Ms. Tise.

20 Make sure you keep your voice up so  
21 everyone can hear.

22 **VOIR DIRE EXAMINATION**

23 **BY MS. TISE:**

24 Q. I want you to look across the courtroom again  
25 and you see the defendant there.

1 A. Yes.

2 Q. You can do it --

3 MR. CORNELIUS: That's asked and answer,  
4 Judge. We object to the question. It's been asked and  
5 answered. It was just asked.

6 THE COURT: Let her finish her question,  
7 because she hasn't finished her question yet.

8 Before you answer, I'll rule on the  
9 objection.

10 You can finish your question or rephrase  
11 it.

12 Q. (By Ms. Tise) Look across the courtroom.

13 A. Okay.

14 Q. And we talked about this earlier, but since  
15 then something has happened and you became very  
16 emotional. And I just want to make sure that if the  
17 answers to the questions based on the evidence leads you  
18 to say "yes," "yes," and "no," you know that's going to  
19 lead to the death penalty.

20 A. Yes.

21 Q. Correct?

22 A. Correct.

23 Q. And can you answer those questions that way if  
24 that's where the evidence leads you knowing that it's  
25 going to result in his execution?

1 A. Yes.

2 Q. Okay.

3 THE COURT: I will allow that.

4 Q. (By Ms. Tise) You talked a little bit in your  
5 questionnaire about police officer witnesses or you were  
6 asked about police officer witnesses.

7 A. What page is that?

8 Q. It's on Page 12. There's two questions about  
9 it and I want to ask you a little bit about that.

10 A. Okay.

11 Q. Okay. Do you believe police officer witnesses  
12 are the same as other witnesses or do you believe you  
13 would give them more or less credibility?

14 A. They are the same.

15 Q. Okay. And so, when they come into the  
16 courtroom and take the stand, you would treat them  
17 equally?

18 A. Yes.

19 Q. Okay. Question number D says you would be --  
20 you would require the defendant to present some evidence  
21 to prove his innocence.

22 A. Correct.

23 Q. Okay. Is that true?

24 A. Yes.

25 Q. And have you changed your position on that

1 since the Judge talked to you on Friday?

2 A. No.

3 Q. Okay. Do you understand that the law says you  
4 have to -- you have to presume him innocent and he  
5 doesn't have to present any evidence?

6 A. Yes, I understand.

7 Q. Okay. And I appreciate your honesty on that.  
8 That's, you know, something that a lot of people  
9 struggle with. They really feel like that the defendant  
10 should present some evidence. And despite what the law  
11 says, that's going to be in the back of their mind when  
12 they render a verdict on a case. Are you one of those  
13 people?

14 A. Yes.

15 Q. Okay. You also said that if a defendant  
16 doesn't testify in a case, you will lean towards voting  
17 guilty because he did not testify.

18 A. Depending on the evidence.

19 Q. Okay. But the law says that regardless of what  
20 the evidence is, you cannot hold the fact that he did  
21 not testify against him.

22 A. I understand that.

23 Q. But despite the law, do you feel like that  
24 would be something that you would hold against him?

25 A. No.

1 Q. Okay. You'd go ahead and follow the law?

2 A. Yes.

3 Q. But you would still require him to put on some  
4 evidence even though the law doesn't require it?

5 A. Correct.

6 MS. TISE: May we approach?

7 THE COURT: Yes. So we can get this on the  
8 record, let's just take the juror out.

9 MS. TISE: Okay.

10 THE COURT: Can you step out for just a  
11 moment?

12 (Venireperson exits courtroom)

13 THE COURT: Yes, Ms. Tise.

14 MS. TISE: I mean, I have other questions  
15 for her if she's going to remain in the mix, but I do  
16 think -- I don't want to waste the Court's time, is what  
17 I'm struggling with. I don't want to spend time going  
18 over the special issues with her --

19 THE COURT: Are you asking Mr. Cornelius if  
20 he wants to agree on her?

21 MR. CORNELIUS: No. Yeah. I don't know if  
22 she's -- I'm not going to agree on her.

23 THE COURT: Okay. So, you want to question  
24 her as well; is that correct?

25 MR. CORNELIUS: Yes.



1 THE COURT: All right. So, then I'm going  
2 to let him question her.

3 MS. TISE: Okay.

4 THE COURT: And I know she said some  
5 things, but she's kind of waffling her back and forth.  
6 I'll let him question her. So, go ahead and complete  
7 your questioning. It's not a waste of the Court's time.

8 MS. TISE: That's what I wanted to do, make  
9 sure you wanted me to do that before --

10 THE COURT: Thank you. I appreciate it.  
11 (Venireperson enters courtroom)

12 THE COURT: All right. Let's proceed.

13 Ms. Tise, you may proceed.

14 Q. (By Ms. Tise) Now, that the -- that one  
15 particular question, the one about requiring the  
16 defendant to put on some evidence in a case --

17 A. Uh-huh.

18 Q. -- you have said it unequivocally several  
19 times, but I can tell you that the defense is going to  
20 talk to you about that. And I'm trying to kind of cut  
21 to the chase and figure out if that's how you feel, that  
22 you will require him to present some evidence?

23 A. Yes.

24 Q. Okay. Even though the law says he is not  
25 required to?

1 A. Yes.

2 Q. And even though the law says he's supposed to  
3 be presumed innocent --

4 A. Yes.

5 Q. -- if you don't hear some evidence or see some  
6 evidence from him, you would not be able to treat him  
7 fairly and presume him innocent?

8 A. Yes.

9 Q. Okay. Do you have any doubts about that  
10 feeling or do you feel strongly about that?

11 A. I feel strongly about that.

12 Q. So, you are not going to change your mind?

13 A. No.

14 Q. That's how you feel?

15 A. Yes.

16 Q. And you understand that the law says they have  
17 no burden in this case, they don't have the burden to  
18 put on any evidence?

19 A. Yes, I understand.

20 Q. But that is a burden that you have inside of  
21 you --

22 A. Yes.

23 Q. -- that you would place on them?

24 A. Correct.

25 Q. And you feel strongly about that?

1 A. Yes, I do.

2 MS. TISE: I'm going to pass the juror.

3 THE COURT: Thank you.

4 Mr. Madrid.

5 MR. MADRID: Thank you, Your Honor.

6 **VOIR DIRE EXAMINATION**

7 **BY MR. MADRID:**

8 Q. Good morning.

9 A. Good morning.

10 MR. MADRID: Just one moment.

11 (Pause)

12 Q. (By Mr. Madrid) Good morning, Ms. Lopez.

13 A. Good morning.

14 Q. I'm Mario Madrid?. This is Skip Cornelius.

15 MR. CORNELIUS: Good morning.

16 Q. (By Mr. Madrid) This is our client, Obel  
17 Cruz-Garcia. I just want to ask you some questions.  
18 You filled out this questionnaire.

19 A. Okay.

20 Q. Ms. Tise has asked some questions. And I will  
21 go over some of the same things. Okay?

22 A. Okay.

23 Q. Now, you -- I guess it says you were born in  
24 California, lived in Arizona, and you live here now?

25 A. Correct.

1 Q. How long have you been here in Texas?

2 A. Three years.

3 Q. And you have a little girl, right?

4 A. Yes.

5 Q. So, you know, I know this is -- this could be  
6 kind of an intimidating experience, especially being  
7 young. I think if I was 24, I'd be sitting up there  
8 scared. Even now I would be if people were asking me  
9 questions. So, I don't want you to feel that way.  
10 Because it's just us and we're just looking for, you  
11 know, what you believe.

12 A. Yes.

13 Q. And it looks like you have some kind of -- just  
14 coincidentally to all of this, you happened to watch  
15 show on Univision three weeks ago.

16 A. Yes.

17 Q. Most people wouldn't walk in here thinking  
18 about this to begin with, but, you know... So, you  
19 happened to think about this. You work at a law firm.  
20 They do a little bit of criminal law?

21 A. Yes, they do.

22 Q. And so, maybe you have a little bit of  
23 knowledge of these things, right?

24 A. Correct.

25 Q. But, I mean, you are not -- you're not a

1 lawyer, haven't been to law school. I don't know if  
2 you've been in a courtroom maybe for a traffic ticket or  
3 something.

4 A. No.

5 Q. Okay. So, you don't really know how this whole  
6 system works other than what you have seen on TV, right?

7 A. Correct. Or just traffic. I had one ticket,  
8 yeah, once.

9 Q. And you understand that in our system, the  
10 United States and in Texas, you are innocent until  
11 proven guilty. You probably heard that as a kid your  
12 whole life, right?

13 A. Yes.

14 Q. And part of what that is, is there is a couple  
15 of things. One, have you ever heard anybody say: I'm  
16 going to take the Fifth or he took the Fifth?

17 A. No, I have not.

18 Q. Okay. What they are referring to when they say  
19 that, if you haven't heard it, they are saying they  
20 don't have to testify if they are accused of a crime.  
21 Have you ever heard of that?

22 A. Yes.

23 Q. Why do you think that is?

24 A. I don't know.

25 Q. Well, if you remember from Monday -- and you

1 may or may not remember -- the Judge was talking about  
2 it and just kind of laid out the framework and the  
3 rules, right?

4 A. Yes.

5 Q. You remember that?

6 A. Yes.

7 Q. And she was talking about murder and then if  
8 there was something else, an aggravating circumstance, a  
9 kidnapping, robbery, whatever --

10 A. Uh-huh.

11 Q. -- then it could become a capital murder,  
12 right?

13 A. Okay. Yes.

14 Q. And in any kind of case, whether it's this case  
15 or any case down in traffic court, there is two sides.  
16 You know the two sides --

17 A. Yes.

18 Q. -- the State and then the defendant, right?

19 A. Correct.

20 Q. And do you remember what the Judge said, who  
21 has to prove what in that process?

22 A. Well, it would be the State, right?

23 Q. The State is making the charges, so they have  
24 to prove the --

25 A. That he is guilty.

1 Q. -- case beyond a reasonable doubt.

2 A. Okay.

3 Q. And she explained to you in that process that  
4 the defendant is, like you said, innocent until proven  
5 guilty, right?

6 A. Correct.

7 Q. So, today like sitting here, Obel Cruz-Garcia,  
8 he is innocent, right, he is not guilty?

9 A. Because of what the law says? Well, yeah.

10 Q. And what you said when you testified earlier,  
11 you were saying you would have to listen to the  
12 evidence, right?

13 A. Correct.

14 Q. And so, you have not heard any evidence, so you  
15 can't --

16 A. Can't make up my mind.

17 Q. You can't make up your mind, right?

18 So, in a trial what happens is the State  
19 has to put on the case. The Judge explained to you that  
20 the defense doesn't have to put on anything. But part  
21 of that process -- I don't know if you've ever seen  
22 anything on Court TV or anything like that.

23 A. No.

24 Q. No trials or anything?

25 A. No.

1 Q. The way it works, if you are in court, we're  
2 kind of sitting like this and the jury is sitting over  
3 here and the State brings witnesses and they sit where  
4 you are sitting.

5 A. Okay.

6 Q. Do you know how that works?

7 A. Yes.

8 Q. And then the State asks them questions and then  
9 the defense can do what's called cross-examine them.  
10 They can ask them questions to try to figure out if they  
11 are credible or telling the truth. Do you follow me?

12 A. Uh-huh.

13 Q. So, on -- in that process, that's part of --  
14 you know, the defense doesn't have to put on any  
15 evidence. And at that point, they're not putting on any  
16 evidence, but they're just questioning the State's  
17 evidence.

18 A. Okay. I understand.

19 Q. Right? But in the process, after the State is  
20 done with all their witnesses, the law tells us that the  
21 defense can either get up and say: I call witness A, B,  
22 or C, or whatever, or they can say: Defense rests and  
23 they don't put on any evidence.

24 A. Okay.

25 Q. Okay. Why do you think that is?



1 A. For the good of your client.

2 Q. No, no. Why do you think they don't have to  
3 put anything on?

4 A. Because you are not charging him with anything.  
5 They are the ones who need to provide to you like he is  
6 the one that's guilty.

7 Q. Yeah. The State has to prove beyond a  
8 reasonable doubt that they are guilty. So, the defense  
9 doesn't have to prove that they are not guilty. Okay?

10 A. Okay.

11 Q. They can contest the charges, but they don't  
12 have to put on any evidence. Do you agree with that or  
13 not?

14 A. Well, I do agree with that, too, so...

15 Q. And the question that I'm having -- and I know  
16 the question that the State has is: Hold on, you just  
17 said -- you just said the opposite of that.

18 A. Correct.

19 Q. I don't want to put any words in your mouth.  
20 Okay? Part of me thinks that, one, you are intimidated  
21 and scared because you're sitting up here and people are  
22 asking you questions and then part of it this is a real  
23 serious case. Okay? And then another part is that you  
24 don't -- nobody would expect you to know what the rules  
25 are, you know, in a courtroom or in a case, you know.

1 That's why we have lawyers. That's why you have a judge  
2 that rules, that makes a ruling whether one side or the  
3 other side is doing something correctly. Right?

4 A. Uh-huh.

5 Q. And so, nobody would expect you to do that.  
6 And we're asking all of those things that I don't think  
7 you know and you are trying to answer the best you can.  
8 I'm not trying to put any words in --

9 A. Well, the thing is, what she said, I do believe  
10 if he did something wrong and if he believes he didn't  
11 do it, then he should speak for himself. I believe in  
12 that. I could hear that, but what you are explaining to  
13 me now, obviously, they are the ones who have to bring  
14 the evidence for him to be --

15 Q. Found guilty beyond a reasonable doubt?

16 A. -- guilty. Correct. So, I believe in that as  
17 well.

18 Q. Can I stop you real quick?

19 A. Uh-huh.

20 Q. Those are two different things. I haven't  
21 asked you about that yet, which is kind of like when  
22 people say: I take the Fifth, and that's when they  
23 don't testify. Okay? But that is one issue. And the  
24 first issue is should -- you know, if the question is,  
25 well, if the State is bringing the evidence and the --

1 you know, because of that, they have to prove it beyond  
2 a reasonable doubt, the defense doesn't have to put  
3 anything on. And you say you believe in that, right?

4 A. Yes.

5 Q. Well, part of putting something on or not  
6 putting something on is testifying or not testifying.  
7 And that's why that right is there, because a person  
8 shouldn't have to prove they are not guilty. Okay?

9 A. Correct.

10 Q. But you said the opposite. And I'm really  
11 trying hard -- I don't want you to think you said that.  
12 So, don't agree with me because I'm saying this.

13 A. I'm not --

14 Q. If you don't agree with me, you don't have to  
15 agree with me. But the first part you believe -- it  
16 sounds like you believe that the State -- I mean the  
17 defense does not have to put anything on because it's  
18 the State that's bringing the charges, right? Well, you  
19 also said --

20 THE COURT: Counsel, why don't you -- I  
21 know you're asking a bunch of questions, but give her a  
22 chance to answer your question because she's not getting  
23 it. I don't think she's answering the question on the  
24 record. You are talking off her answer.

25 MR. MADRID: Okay. Thank you.

1 Q. (By Mr. Madrid) So, I'm going to ask that  
2 again. Do you believe -- and you can tell me "yes" or  
3 "no" -- whether the State has the burden to put on the  
4 case?

5 A. Yes.

6 Q. To prove the case. I'm sorry. To prove the  
7 case.

8 A. Yes.

9 Q. And because of that, the defense does not have  
10 to put on any evidence. Do you agree with that?

11 A. No.

12 Q. Okay. And could you explain that? Because you  
13 said -- you said something differently just a second  
14 ago.

15 A. I believe that if he believes that he is  
16 innocent he needs to speak. Because if everything is  
17 against him and he is not guilty, I'm going to get up  
18 and say: You know, I didn't do this. I believe in that  
19 as well.

20 Q. Okay. And if -- I'm going to go through -- if  
21 you'll let me ask you the question. Because that's the  
22 second part of the question, was whether he should  
23 testify or not testify. Right?

24 A. Uh-huh.

25 Q. But fundamentally it's just the first part --

1 and you said this earlier. You agree the State has the  
2 burden to the case beyond a reasonable doubt?

3 A. Do I agree, you said?

4 Q. Yes.

5 A. Yes, I do agree.

6 Q. And because of that, part of that is the  
7 defense doesn't have to put any evidence on. Okay? Now  
8 what I hear you telling me is: Yeah, I agree with that,  
9 but I'd like to hear the defendant testify. And a lot  
10 of people would like to hear the defendant testify.  
11 That's a common feeling. You know, like people say:  
12 Hey, if that was me, I would go testify. Right?

13 A. Correct.

14 Q. Now, they don't -- under the rules and the law,  
15 they don't have to testify. So, this is a big concern  
16 because if you were to sit on as a juror, you would get  
17 instructions from the Judge that you can't use that, the  
18 fact that they didn't testify, as evidence against them.  
19 Okay?

20 A. But that doesn't mean I'm going to be against  
21 it because of that. I am going to listen to the  
22 evidence and from there is where I make my own decision  
23 on what I believe.

24 Q. Which is what you would make it on --

25 A. On the evidence. Not because -- just because

1 he didn't testify, I'm not going to put: Okay. He  
2 didn't testify, I'll go directly that he is guilty. No.  
3 Because I'm not going based on that. I'm going based on  
4 the evidence.

5 Q. So, what I hear you saying is that you would  
6 like to -- and we would all like to -- hear what the  
7 person accused has to say.

8 A. Correct.

9 Q. But you wouldn't use that as evidence, you  
10 would look at all of the evidence that the State  
11 presents; is that what you're saying?

12 A. Yes.

13 Q. And I want you to say it yourself because --

14 A. No. That is what I said right now. I'm going  
15 to hear what the State is going to give me as evidence  
16 to see if he is guilty or if he is innocent. I would  
17 personally -- like, if they said all of the evidence is  
18 against him for him to stand up for himself and say:  
19 You know, I didn't do this, or this is what happened.  
20 That's what I would like to hear from him, but if you  
21 guys and he decides not to do it, it doesn't mean  
22 necessarily that he is guilty. I'm not going to do  
23 that.

24 Q. And you can understand why somebody would -- or  
25 could you understand. I will give some reason why

1 someone would not want to testify. One, their attorney  
2 might say: Hey, this isn't a good idea, they didn't  
3 prove their case. That could be a reason.

4 A. Yes. There's many reasons. I work for an  
5 attorney's office and I understand that part as well.

6 Q. Or another reason could be they are nervous.  
7 Like, if you were sitting up there in your recuse  
8 something.

9 A. Uh-huh.

10 Q. And the State was -- you know, they have really  
11 good attorneys and they wouldn't be trying this case if  
12 they weren't good attorneys. They would be  
13 cross-examining you, right?

14 A. Correct.

15 Q. And based on your nervousness or intimidation,  
16 you might appear to be guilty.

17 A. Uh-huh.

18 Q. Right? So, you can understand there are  
19 reasons?

20 A. Yes.

21 Q. There is -- you know, it seems like when you  
22 had the chance earlier -- hold on just a second.

23 (Pause)

24 Q. (By Mr. Madrid) There was some -- you were  
25 asked some questions on a scale of one to ten, ten being

1 the -- you know, like the strongest feeling for the  
2 death penalty and one being you'd never have a death  
3 penalty, you said six, correct?

4 A. Uh-huh.

5 Q. Do you still feel the same way?

6 A. Well, I still feel like it's a five.

7 Q. Okay.

8 A. But you guys don't give me the option of five.

9 Q. Okay. And the reason you say five, why do you  
10 say five?

11 A. Because I haven't heard any evidence. I don't  
12 know what's happened, why he is here.

13 Q. And so, you would wait before you made a  
14 decision on this case, on either side on -- and we're  
15 not saying -- you know, a lot of this that we're talking  
16 about, you know, is the death penalty, but you  
17 understand there are two phases. There is the  
18 guilt-innocence part -- and we're not saying that our  
19 client is guilty. We're not here to say that at all.  
20 You know, we're here to defend him and fight this case.

21 A. Correct.

22 Q. In the event in any case that our client were  
23 found guilty, we'd go to the second part, which is the  
24 punishment phase. Okay? And so, on either phase of the  
25 trial you would -- would you wait and listen to all of



1 the evidence?

2 A. Yes.

3 Q. Okay. Thank you.

4 MR. MADRID: Pass the juror, Your Honor.

5 **VOIR DIRE EXAMINATION**

6 **BY THE COURT:**

7 Q. Okay. I have a couple questions, Ms. Lopez.

8 A. Uh-huh.

9 Q. I'll just tell you the law is --

10 A. Okay.

11 Q. -- and then I'm going to ask you a few  
12 questions regarding the law in regards to your feelings.  
13 And I know that a lot of people come in here and they  
14 want to be law-abiding citizens and follow that law.  
15 You have told both sides a little bit different things.  
16 So, that's why I want to clear it up for my own sake. I  
17 don't care if you can or cannot follow exactly what the  
18 law is, but we need to know what's in your heart.  
19 Because we don't get you over there in that jury box and  
20 you not be able to follow the law. Okay?

21 A. Okay.

22 Q. Let's start with the presumption of innocence.  
23 And each individual in our society is presumed innocent  
24 of whatever charge that may be brought by the government  
25 against them. And it is completely up to the State, the

1 government, in whatever fashion, whether it's United  
2 States government or the state government or the local  
3 government to provide the evidence that proves them  
4 guilty. So, as they sit before you today, you must give  
5 them the presumption of innocence. Okay? That's what  
6 the law states, but a lot of people come in here and  
7 say: You know, I have a background, I work at my job, I  
8 see plenty of people, whatever the reason is, or the  
9 fact that they are indicted, or anything like that, I  
10 can't really give them that presumption of innocence, I  
11 already think they are starting out a little bit behind.  
12 And you mentioned that in one of your answers, that you  
13 leaned towards guilty. Okay? You can see how that  
14 doesn't -- that conflicts with a presumption of  
15 innocence. Okay?

16 A. That's because I'm not giving a chance, is that  
17 what you mean or --

18 Q. If you lean towards guilty already -- you  
19 should be at zero. If there is a -- if there is a  
20 barometer, zero is presuming innocence and guilty is 100  
21 percent, you should start at zero when you first see  
22 somebody. And it's up to the State's to get you all the  
23 way -- once you start hearing evidence, all the way over  
24 to that barometer. If you look at it like a  
25 speedometer, I guess is a better way to say that. To

1 get you all the way past, over here to -- maybe not 100  
2 percent, but to beyond a reasonable doubt. Okay?

3 A. Now I understand.

4 Q. And you're saying you're leaning towards guilty  
5 and you have not heard anything.

6 A. Now I understand.

7 Q. And it's good that you understand that concept  
8 now, but I need to know from -- not only that you  
9 understand it, but that you actually can follow that  
10 concept because you've told us in a couple different  
11 ways that you are not inclined to give the defendant the  
12 presumption of innocence, that you are leaning towards  
13 guilty. Is that the way you feel?

14 A. No, no. Since I have to hear the evidence, the  
15 way you explained it to me now, I can give him the  
16 presumption of innocence.

17 Q. The presumption of innocence?

18 A. Yes.

19 Q. And you feel certain you can if you were asked  
20 to take an oath on that?

21 A. Yes.

22 Q. Okay. And the second one is requiring the  
23 defendant to present evidence. We talked about it in a  
24 couple different forms. In our courts, testimony is  
25 evidence. So, if the defendant chose to testify, that

1 is evidence. But there is other evidence, too. There  
2 is physical pieces of evidence. Like, you know, a gun,  
3 or, you know, a blade of glass, anything physical, DNA,  
4 you know, pictures, those are all evidence. And the  
5 defendant would be given an opportunity to put that on  
6 if he wanted to, if his defense team wanted him to and  
7 he decided he wanted to, but he's never required to do  
8 that. In other words, they could sit there the entire  
9 trial say nothing, cross-examine no witnesses, and put  
10 on no evidence themselves. There is no requirement that  
11 they do so. And the reason being, once again, going  
12 back to it's the burden of the State to prove beyond a  
13 reasonable doubt his guilt.

14 But like I said, a lot of people come in  
15 and they feel the same way that you talked about  
16 feeling, that you are going to require him in one way or  
17 another to present some evidence or to testify himself  
18 because you probably would do it if you were charged,  
19 you said. Correct?

20 A. Correct.

21 Q. So, in both of these situations, I need to ask  
22 you -- and I don't care whether you are going to require  
23 that or not. It makes no difference to me whatsoever.  
24 We just need to know one way or another. Will you  
25 require the defendant or the defense team to put on some

1 evidence in this case in order for you to find against  
2 the State?

3 A. The evidence the State gives me -- if the State  
4 gives me the evidence towards that he is guilty more,  
5 then I would require him to give me evidence that he is  
6 not. I would require the defense.

7 Q. Okay. And that kind of makes sense, but you  
8 are still requiring the State to make their burden.  
9 Would you require them to prove to you?

10 A. Yes.

11 Q. And then you would be voting for guilty, which  
12 would be fair, correct?

13 A. Correct.

14 Q. And unless and until -- then at that point you  
15 can say that you would require him --

16 A. Correct. Well, that would be their option, but  
17 if they don't, then I wouldn't be against that if he  
18 doesn't. And I wouldn't be more in favor if he does.  
19 It would help me to make my mind up.

20 Q. Okay. How about if the State doesn't meet  
21 their burden of proof; they get really close, but they  
22 are not quite there and you didn't see any evidence from  
23 the defense at all?

24 A. Then that wouldn't affect my decision on what  
25 evidence I have already.

1 Q. What would your decision be in that situation?

2 A. Keep on hearing the evidence that I do have.

3 That's what I'm going to base it on.

4 Q. But you wouldn't have any more evidence. You  
5 would have what the State gave you, which is really  
6 super close, and then the defense rests. What happens  
7 to your situation then? You don't have any more  
8 evidence. What is your verdict?

9 A. Well, it would be -- it would be the death  
10 penalty, whatever they -- I would decide on what the  
11 evidence that the State gave me only.

12 Q. That's what I'm trying to tell you. If the  
13 State gets really close to proving their case beyond a  
14 reasonable doubt, but not quite there, and then it's  
15 time -- they rest, they're finished, and then it's  
16 turned over to the defense and they don't have any  
17 evidence, what is your -- what is your verdict going to  
18 be? Let's not talk about the death penalty. Let's talk  
19 about the guilt stage. They get really close to proving  
20 that beyond a reasonable doubt and then they rest and,  
21 then it's turned over to the defense and you don't hear  
22 any evidence whatsoever. What is your verdict going to  
23 be?

24 A. Guilty.

25 Q. Why would it be guilty?

1           A.    Because they don't give me enough evidence for  
2 me to believe that he is and the State is the one who  
3 gave me more than -- and if I believe their evidence is  
4 true, then I would -- it would be guilty, but if the  
5 State gives me evidence that I don't think it would be  
6 guilty for him, even though they have less evidence, I  
7 would be in favor that he is guilty. I don't know if  
8 I'm explaining myself.

9           Q.    I think you are fine. Yeah.

10                    Okay. And let's go on to the very last  
11 one, the right to remain silent. And so, you said you  
12 would like to hear him testify. And that would be  
13 evidence, too. What if he doesn't? Once again, let's  
14 do that same scenario. The State put on their evidence,  
15 gives you a bunch of evidence, it's really close to  
16 proving to you beyond a reasonable doubt, doesn't quite  
17 get there, but really, really close, and then it's the  
18 defense's side and you really want to hear from him, but  
19 you don't hear from him. What is your verdict?

20           A.    It's not going to -- it's not --

21           Q.    Would your verdict be guilty or not guilty in  
22 that situation?

23           A.    Guilty.

24           Q.    Okay. All right. Thank you very much.

25                    THE COURT: Can you step out?

1                   VENIREPERSON:    Sure.

2                   THE COURT:    Actually, you can stay right  
3 here.

4                   Is there a motion from either side?

5                   MS. TISE:    Not from the State.

6                   MR. CORNELIUS:   We need a minute with our  
7 client.

8                   THE COURT:    All right.   Why don't you go  
9 ahead and step out and we'll be with you in just a  
10 minute.

11                   (Venireperson exits courtroom)

12                   MR. CORNELIUS:   We will not make a motion,  
13 Judge.

14                   THE COURT:    You are not making a motion?

15                   MR. CORNELIUS:   We're of the opinion that  
16 she's confused and we're not making a motion.

17                   THE COURT:    Okay.   Does the State have a  
18 motion?

19                   MS. TISE:    Well, I went back and read the  
20 questions that you just asked her, Judge, and I think  
21 we're in a position where we have to because we're going  
22 to have error if we don't.   Because she just said she'd  
23 find the defendant guilty even if there wasn't  
24 sufficient evidence, even if it got close.   So, out of  
25 concern for the record on the case, I think we have to



1 make a motion.

2 THE COURT: I put sua sponte. I was just  
3 looking at that. I believe that she could not be a fair  
4 juror, I put sua sponte. So, I will grant your motion  
5 for cause on this juror. And you can bring her back in.

6 MR. CORNELIUS: Hold on. Let me get my  
7 thing on the record here.

8 THE COURT: Very good.

9 MR. CORNELIUS: It's the defense's  
10 intention to take her as a juror. I don't know if the  
11 State would have accepted her or not, but we want her as  
12 a juror. We don't feel -- we're satisfied with the  
13 answers that she gave us in our questioning. I know  
14 she's vacillated back and forth. And I'm not arguing  
15 with the Judge, not arguing with the State, but I want  
16 the record to be clear we want her as a juror and we  
17 don't want her disqualified for the reasons the Court  
18 disqualified her on the basis of the State's motion.  
19 We're not making a motion. We're clear that we would be  
20 happy to waive their understanding of what she said or  
21 even the Court's understanding of what she said. We  
22 want her as a juror. That's it. That's my record.

23 THE COURT: Okay. And I'm going to put on  
24 the record that based on the Court's questioning of the  
25 juror -- and the Court put it in the most simplest terms

1 that I could. My hypothetical was that the State had  
2 not -- had gotten very close, but had not met the burden  
3 of proof beyond a reasonable doubt on the evidence and  
4 asked her if the defense -- the defendant did not  
5 testify or if the defense provided no evidence  
6 whatsoever what her verdict would be and she said  
7 guilty. Both times she said guilty. For that reason,  
8 the Court is of the opinion that she cannot follow the  
9 law. Whether it's a misunderstanding of the law or just  
10 her general feelings, she has told me what she would do  
11 twice. And so, I'm going to grant the motion for cause  
12 on Juror No. 69, Patricia Rivera Lopez. Okay.

13 MR. CORNELIUS: Judge, out of fairness, I  
14 never laid down the law. What if our defensive theory  
15 didn't include putting on evidence and we're not  
16 concerned with that because we do intend to put on  
17 evidence or we do intend to call the defendant? What if  
18 that was not something that's ever going to be a factor  
19 in the case?

20 THE COURT: Well, you can't tell me that  
21 now.

22 MR. CORNELIUS: That's true.

23 THE COURT: You can't tell me what's going  
24 to happen in the future. And she's already telling me  
25 that she's not even going to require them to meet their

1     burden by her answers.

2                     MR. CORNELIUS:   Okay.   That's fine.

3                     THE COURT:    I just can't see --

4                     MR. CORNELIUS:   I have never seen a case  
5     where -- decided where the State waived -- I mean the  
6     defense waived a Fifth Amendment requirement or the  
7     State meet their burden requirement.   I've never seen a  
8     case on that.   So, this is new stuff.   I wanted to give  
9     you every opportunity to put what you wanted to put in  
10    the record.   And I think you quite honestly said, and  
11    truthfully said, I can't make those representations to  
12    you now because we wouldn't make those decisions now.

13                    THE COURT:    Right.

14                    MR. CORNELIUS:   But, anyway, I want the  
15    record to be complete so that we won't have to explain  
16    any more later to somebody else.

17                    THE COURT:    Right.   Okay.   And I would sua  
18    sponte grant this as well.   The motion is granted by the  
19    State, but I totally agree.

20                    So, bring the juror back in.

21                    (Venireperson enters courtroom)

22                    THE COURT:    Ms. Rivera Lopez, you don't  
23    need to take the stand.   We're going to excuse you as a  
24    juror in this case.

25                    VENIREPERSON:   Okay.

1           THE COURT: And we really appreciate all  
2 the time you spent, three days now coming down here; a  
3 lot of time and energy. We could not do this without  
4 involved concerned citizens like yourself. So, we  
5 greatly thank you.

6           We put you under some admonishments.  
7 You're released from all of those admonishments at this  
8 time. So, you can speak with whomever you want about  
9 your experience here in this case. And if you need  
10 something for work today, Deputy Perry can get you the  
11 excuse. It's good through 5:00 today.

12           VENIREPERSON: All right. Thank you.

13           THE COURT: Good luck to you, ma'am.

14           VENIREPERSON: Thanks.

15           THE COURT: We have 64 and 72. We'll start  
16 with 64. Does anybody need a break?

17           MS. TISE: Ten minutes?

18           THE COURT: You can take a break, Ms. Tise,  
19 if you need to once we get started. Mr. Wood is going  
20 to be handling it, correct?

21           MR. WOOD: Oh, yeah. Sure.

22           MR. CORNELIUS: I'll go to the restroom.

23           THE COURT: Mr. Wood, are you okay?

24           MR. WOOD: No. I'm fine.

25           (Venireperson sworn)

1                   **NANCEE PYPER, VENIREPERSON NO. 64,**  
2       was called as a prospective juror, and testified as  
3       follows:

4                   **VOIR DIRE EXAMINATION**

5       **BY THE COURT:**

6           Q.     Okay. Ms. Pyper, your name is Nancee Pyper?

7           A.     Yes.

8           Q.     And you are Juror No. 64 in the venire that was  
9       brought before this Court on the State of Texas vs. Obel  
10      Cruz-Garcia. Correct?

11          A.     Yes.

12          Q.     This is a continuation of the voir dire  
13      process. And one lawyer from each side will have an  
14      opportunity to speak with you. I'm going to hold them  
15      to 30 minutes aside. Thank you for coming in early.

16          A.     Uh-huh.

17          Q.     And we'll try to get you out of here early.

18          A.     Awesome.

19          Q.     So, they will be asking questions over the same  
20      material that I talked about, but more specific to you.

21          A.     Okay.

22          Q.     And even though you are under oath to speak  
23      truthfully, there's really no right or wrong answers to  
24      this. They want you to tell your feelings truthfully.

25          A.     Okay.

1 Q. And if you have any questions about what their  
2 questions are, please ask them to rephrase. I have  
3 three questions myself before we get going.

4 Do you have any religious, personal, or  
5 moral reasons you would be unable to sit on a jury where  
6 the death penalty is a possible punishment?

7 A. No.

8 Q. Do you know of any reason why you could not be  
9 fair and impartial to both sides in a criminal case?

10 A. No.

11 Q. Have any of your answers from the questionnaire  
12 changed?

13 A. No.

14 Q. We all have a copy of your questionnaire, so  
15 let us know if at some point you need that. They are  
16 going to ask you some questions over that probably.

17 THE COURT: I'll turn you over to Mr. Wood.  
18 It is 12:20.

19 MR. WOOD: Thank you, Your Honor.

20 **VOIR DIRE EXAMINATION**

21 **BY MR. WOOD:**

22 Q. Good afternoon, Ms. Pyper.

23 A. Hi.

24 Q. Welcome back.

25 A. Thank you.

1 Q. How are you doing today?

2 A. Good.

3 Q. Well, like the Judge said, my name is Justin  
4 Wood. Natalie Tise has stepped out just for a second.  
5 She'll be right back. Together we'll be trying the case  
6 if you are chosen to be one of the jurors on the case.

7 A. Okay.

8 Q. This is Steve Walsh here in the back. He is a  
9 law student, an intern of ours, and he'll be helping us  
10 out throughout the trial.

11 A. Okay.

12 Q. Just like the Judge said, this is our chance to  
13 get to know you a little bit better. We have a little  
14 better insight after this nice questionnaire, but there  
15 will be some questions I ask you specifically from that  
16 and then some of the things we talked about in  
17 general -- or you talked about in general with the Judge  
18 on Monday.

19 A. Okay.

20 Q. This jury selection process, I see you have not  
21 been down here -- you haven't been on a jury before.

22 A. Been on a panel similar to this, but never on  
23 an actual jury.

24 Q. Okay. Cool. So, you've kind of had a hint at  
25 this process. You can see now that this process for a

1 death penalty capital murder is very involved.

2 A. Yes.

3 Q. And rightfully so. It's a serious case. And  
4 this opportunity for us to be able to visit and talk  
5 one-on-one is a good chance to get to know you. We want  
6 to be able to pick -- the defense team and us, we want  
7 to pick the best 12 and fairest, most impartial jurors  
8 in the case.

9 So, a couple of things up front I wanted to  
10 ask you about. You are a behavior consultant at Cy-Fair  
11 ISD.

12 A. Yes.

13 Q. What exactly is that?

14 A. I deal with students who are either on a  
15 behavior plan for misconduct, persistent misconduct.  
16 I'm a liaison for the school district, for the schools.  
17 Cy-Fair is a very large district. There are five of us  
18 that do this. I have 17 elementary schools that I  
19 serve. And as a request comes in, then I am called out  
20 to observe either the teacher or the student and give  
21 support and feedback.

22 Q. Okay. And prior to that, you were in a  
23 classroom?

24 A. I was in a classroom for four years. I was a  
25 specialized teacher in like alternative behavior for



1 third, fourth, and fifth grade students.

2 Q. Well, God bless you. That's one job I could  
3 not do, I can tell you.

4 And you like reality TV.

5 A. Uh-huh.

6 Q. That's one thing we probably have in common.  
7 What's your favorite?

8 A. Right now my son has gotten me hooked on the  
9 new baking one that's going on.

10 Q. Well, I'm reality TV junkie, I will admit. I  
11 shy away from any law shows or anything like that.  
12 Mindless TV works best. You've got four kids --

13 A. Yes.

14 Q. -- that are currently 18 to 24?

15 A. Yes.

16 Q. That's a lot of teenagers at one time.

17 A. It was. Yes. My youngest graduates tomorrow  
18 from high school, so...

19 Q. I was going to ask that. I saw that. So,  
20 we're not going to interfere with graduation or  
21 anything?

22 A. No.

23 Q. Well, congratulations on getting all of that  
24 done.

25 The Judge spoke to you a little bit about

1 the case and what kind of case it is and gave a little  
2 bit of distinction between capital murder and murder.

3 Did that make sense to you? Was that new to you?

4 A. It wasn't new to me. It was a learning  
5 experience. It was informative to realize the  
6 difference and what was involved to make it one or the  
7 other.

8 Q. Right. And you recall that there is murder and  
9 then there are -- there is murder plus something, is  
10 what I -- how I refer to it to get to capital murder.

11 A. Correct.

12 Q. And if I was to put you in charge of -- you  
13 were governor of the day for Texas. You don't have to  
14 agree with your husband or your four kids or anybody  
15 else. And I was to ask you: Would you have capital  
16 punishment, would you have the death penalty as a  
17 possible punishment if you were in charge?

18 A. I believe I would.

19 Q. Okay. And Judge went over some of those  
20 special cases that rise to the level of capital murder  
21 in Texas, whether it be killing a police officer in the  
22 line of duty, killing a child younger than ten, two or  
23 more people in the same transaction, someone committing  
24 a murder in the commission -- during the commission of a  
25 serious felony, like burglary or sexual assault,

1 robbery, kidnapping, those types.

2 A. Right.

3 Q. Are those the types of offenses you think are  
4 appropriate for the death penalty or did you have  
5 something else in mind?

6 A. No. I think those are appropriate.

7 Q. As far as your family goes, maybe your  
8 husband -- I don't know how often the issue of the death  
9 penalty or capital punishment comes up in family  
10 discussions, but do you think that's an idea you share  
11 with your husband or are there people in your family  
12 that have different opinions on that?

13 A. On the death penalty itself? I think  
14 case-by-case. I think we pretty much agree, depending  
15 on the facts of the case that it is an option.

16 Q. Right.

17 A. And an appropriate option in some cases.

18 Q. Well, if we think about it -- we can think  
19 about it and talk about it in a vacuum what our  
20 philosophy is on it, and that's fine, and many people  
21 do. But it's a little different when you are going  
22 through the process and you are sitting where you are  
23 now. You have been down here now three different days.  
24 You are very close to being seated on a jury that would  
25 consider the death penalty. Sit in that box, hear the

1 evidence, and make that decision.

2 A. Right.

3 Q. As you sit here today, you know this is Obel  
4 Cruz-Garcia, the gentleman over here in the headphones.  
5 As you sit here, I want you to look at him and I want  
6 you to be able to tell me that if the evidence leads you  
7 in the direction, if the evidence shows to you that you  
8 have to answer those questions in the punishment phase  
9 of the trial after you've found him guilty, that leads  
10 you in a direction that would answer those questions,  
11 which we'll go over, a "yes," "yes," and a "no," that  
12 you know would eventually lead to his execution, would  
13 be able to do that?

14 A. Following those procedures, yes.

15 Q. Okay. I appreciate that.

16 A little bit about the trial process. As  
17 the Judge explained to you, the trial is -- a trial in  
18 Texas is in two parts. It's a little different than  
19 some states, but in Texas there is the guilt-innocence  
20 phase, and in Texas, which is rare from some states, the  
21 jury can have the option of assessing the punishment as  
22 well. And in the guilt-innocence phase, there is  
23 certain types of evidence that you are going to hear  
24 that may be different than the punishment phase.

25 A. Okay.

1           Q.   For guilt, you are going to hear evidence  
2 focused in on the offense. We can't talk about  
3 things -- generally we can't talk about things outside  
4 of that. We've got to focus our evidence in on just the  
5 facts of case. And you heard the Judge explain to you  
6 the burden and -- the burden of proof. That lies with  
7 Natalie and I throughout the entire trial. We have to  
8 prove the case to you beyond a reasonable doubt. And,  
9 in fact, we have to prove the elements of capital murder  
10 to you. And they are also on that small screen, too.

11           A.   Okay.

12           Q.   Those are the elements of capital murder that  
13 Judge read to you from that indictment on Monday. We  
14 have to prove each and every one of those items to you  
15 beyond a reasonable doubt. And while we carry that  
16 burden, those are the only elements or the only things  
17 about the case that have to be proven to you beyond a  
18 reasonable doubt. Naturally, you are going to hear --  
19 you could hear more than just what relates to those  
20 elements, obviously; but you will notice on there that  
21 you can see there's the when, the where, the who, the  
22 what. You know, that is all addressed. But the why is  
23 not up there. Someone's motive behind doing something  
24 is not something we have to prove.

25           A.   Okay.

1           Q.   While human instinct is we want to know that,  
2 just curiosity tells you, as many children you have  
3 dealt with, school children and your own, you probably  
4 get to the bottom of that question more times than not.  
5 But as a juror that is not one thing that we have to  
6 necessarily prove to you.

7           A.   Right.

8           Q.   You may learn that and that is great, but it's  
9 not something that you necessarily will. Is there  
10 anything about that that bothers you or are you okay  
11 with that?

12          A.   I'm a little bit confused on the part where  
13 it's committing and attempting to commit kidnapping. Is  
14 that different as far as an actual kidnapping if it were  
15 to have happened? Is that something that I'd have to  
16 consider?

17          Q.   Well, you would be given instructions on what  
18 the law on kidnapping is.

19          A.   Okay.

20          Q.   And just -- it could be proven that -- the  
21 elements of kidnapping could be met and you've got to  
22 believe that that is what -- that we met our burden on  
23 that element. But without going into -- you know, at  
24 this point, I can't go into specific facts.

25          A.   Right.

1 Q. You would have to believe that that element of  
2 the offense was proven to you beyond a reasonable doubt.

3 A. Okay.

4 Q. There could be any number of facts that relate  
5 to that.

6 A. Okay.

7 Q. Is that --

8 A. Uh-huh.

9 Q. -- okay?

10 Naturally, you are going to hear --  
11 potentially hear all different types of evidence, but is  
12 there certain evidence that you think you would expect  
13 to hear in a criminal case or specifically a capital  
14 murder case that would come before you as a jury? Just  
15 in general, not --

16 A. Just in general?

17 Q. Yeah.

18 A. Just the background that led up to the charges.

19 Q. Okay. And do you think that might sometimes  
20 come through witnesses?

21 A. Yes.

22 Q. Many times people think of, you know, photos  
23 and murder weapons, and, you know, maybe DNA, or those  
24 types of physical or forensic evidence as types of  
25 evidence. And many times people don't think of

1 witnesses and witness testimony as evidence, but the law  
2 says that's testimony that -- that's evidence that you  
3 are to consider as well. And naturally so. It would be  
4 strange to have a trial with no witnesses that you could  
5 consider as evidence. So, that's going to be evidence  
6 that you are told that you can consider is witness  
7 testimony.

8 A. Okay.

9 Q. And with witnesses -- and the Judge went over  
10 this on Monday -- you, as a jury, your main job is going  
11 to be judging the credibility of those witnesses.  
12 That's going to be one of your primary duties. And the  
13 Judge explained to you that all witnesses, before they  
14 testify, start out on an equal playing field.

15 A. Right.

16 Q. You can't give one witness more credibility  
17 than the other just because of something you might know  
18 about them. For example, that they are a police officer  
19 or a priest or a prostitute or whatever it might be.  
20 The instruction is for you to listen to the evidence and  
21 the testimony and until you've heard that testimony,  
22 only at that point can you start weighing their  
23 credibility. You probably have lots of experience in  
24 that. Is that a concept that you are okay with?

25 A. Yes.



1           Q.    Okay.  I know that we talked about in a  
2 criminal case you can expect some of those witnesses  
3 might be law enforcement, police officers and such.  In  
4 a criminal trial or in trials that we have almost every  
5 time, even though I gave the statement every time,  
6 police officers write reports and do offense reports and  
7 police reports, and you are going to hear reference to  
8 those, obviously; but at the end of the day, those types  
9 of things like reports, witness statement, written or  
10 recorded, those are not evidence typically that the jury  
11 gets to go back and look over and consider.  The law  
12 says that a witness has to come into the courtroom and  
13 speak from their own mouth and you get to judge their  
14 credibility rather than you just reading a report.  So,  
15 just so you know that.  If somebody goes back there and  
16 says:  Let's ask for that police report, you can remind  
17 them that's not evidence.

18           A.    Okay.

19           Q.    In the punishment phase of the trial --  
20 obviously, the punishment phase of the trial comes once  
21 you have come to a decision as 12 jurors on the guilt  
22 phase.  You know, if you have decided beyond a  
23 reasonable doubt that we have met our burden on all of  
24 those elements, then and only then do you move on to the  
25 punishment phase of the trial.  And in the punishment

1 phase, there can be new evidence presented to you,  
2 obviously. Presented to you from the State you might --  
3 or from the defense. Again, the defense does not have  
4 to, but you might get to learn about things about the  
5 defendant's background, whether that be good or bad, at  
6 the punishment phase. And different from other cases, a  
7 death penalty capital murder case, if you are sitting on  
8 that jury, the Judge explained to you, which is usually  
9 more comforting to jurors to know, you aren't just left  
10 to go back there and say: We're assessing the death  
11 penalty or we're not.

12 A. Right.

13 Q. You know, there is a framework. Those  
14 questions are laid out for you, those special issues.  
15 And we'll talk about those. There are three of those  
16 that you have to answer.

17 A. Right.

18 Q. And there is a couple of things about that I  
19 want to visit with you about up front. The rule is you  
20 can't -- you have to take each one of those questions  
21 individually and evaluate the evidence and the testimony  
22 that you had and you heard that relate to those and look  
23 at those individually. And if you answered that first  
24 question as a jury with the answer "yes," then you move  
25 on to the second question. If you answer "no," then it

1 stops there. Because in Texas, there is two different  
2 punishments for capital murder, the death penalty, and  
3 if the death penalty is not assessed or not sought by  
4 the State, then it's a life sentence. And the current  
5 law is that it's life without parole. However, that  
6 only came on board in 2005. So, before that, it was  
7 life with parole elgi -- with parole, but after  
8 eligibility comes from serving a certain number of years  
9 in prison.

10 A. Okay.

11 Q. And because this offense is alleged to have  
12 occurred in 1992, we have to take the laws as they were  
13 back in '92. Does that make sense?

14 A. Yes.

15 Q. So, we're talking about the death penalty or  
16 life in prison with parole eligibility after serving 35  
17 years in this case. So, as a jury, if you are answering  
18 those special issues and you answer "no" to the first  
19 special issue, then it's a life sentence.

20 A. Okay.

21 Q. But if you answer "yes," you move on to the  
22 second and so forth.

23 So, my question to you, Ms. Pyper is that  
24 you -- hypothetically say you -- not talking about this  
25 case, but you are sitting on a jury --

1 A. Uh-huh.

2 Q. -- and you have found the defendant guilty, you  
3 are moving on to that second phase, the punishment  
4 phase, you've heard evidence or new evidence or  
5 testimony on different issues and it's now your -- now  
6 it's time to make those decisions on the special issues.  
7 Will you commit to me, Ms. Pyper, that you aren't going  
8 to automatically answer "yes" or "no" to any of those  
9 questions just because you have found the defendant  
10 guilty?

11 A. Yes.

12 Q. Will you agree with me that you will evaluate  
13 the evidence and the testimony that's before you in  
14 determining your answer to those questions?

15 A. Yes.

16 Q. Okay. Specifically I want to talk to you about  
17 Special Issue No. 1. And this is what we call the  
18 continuing threat issue. And as a jury, you are going  
19 to have to answer and find beyond a reasonable doubt  
20 whether we've met our burden on this issue. And it's  
21 essentially finding whether or not there is a  
22 probability that this person will commit future acts of  
23 violence. And a couple of things about this special  
24 issue that I want to visit about is that word  
25 "probability." There's got to be a probability that

1 that will happen.

2 Now, you will agree with me, won't you,  
3 that does not necessarily mean certainty, it's not an  
4 absolute certainty.

5 A. Right.

6 Q. But more than just a possibility. There's got  
7 to be a probability, maybe more likely than not, whatever  
8 your definition of it is, that future acts or other acts  
9 of criminal violence would be committed in the future.  
10 In talking about criminal acts of violence, now the  
11 Judge explained it to you, but I want to visit with you  
12 about that. There isn't a requirement that we show  
13 necessarily that another murder or capital murder would  
14 be committed. That's not what that says. It just says:  
15 Other criminal acts of violence. So, other criminal  
16 acts of violence. So, that can be committed against  
17 another person, maybe against someone's property, maybe  
18 it's verbal threats, whatever in your mind that you  
19 might consider criminal acts of violence.

20 What kind of things do you think would show  
21 someone's propensity to commit criminal acts of violence  
22 for you?

23 A. Probably a continuation of some other things  
24 you said. Verbal threats, hurting or insulting in a  
25 threatening manner other people.

1 Q. Okay. Maybe -- so, maybe looking at someone's  
2 background?

3 A. Uh-huh.

4 Q. What they've done since or before or whatever?

5 A. Right. The background, what's happened since  
6 that supposed date.

7 Q. So, maybe other -- it might -- it might rise to  
8 the level of other offenses, but it don't necessarily  
9 have to be prior convictions or anything like that.  
10 Would you agree with me?

11 A. Correct.

12 Q. All right. How about the concept of the  
13 fact -- looking at the offense alone, looking at the  
14 actual acts committed in the offense. The law says that  
15 you can consider that, too, in considering whether  
16 someone has a probability of committing future acts of  
17 violence. And would you agree with me there are some  
18 offenses that standing alone might show someone's  
19 propensity to commit future violence?

20 A. Sure.

21 Q. Are you familiar with the Candy Man murder?

22 A. No.

23 Q. That situation was where an individual, a  
24 father actually poisoned his own son, his own son's  
25 Halloween candy. Poisoned like a pixie stick,

1 essentially.

2 A. Okay.

3 Q. And killed his own son for insurance money.

4 Although, it seems unfathomable, that happened. And in  
5 Texas that could be considered capital murder. And  
6 would you agree with me that there are some -- there are  
7 some offenses, maybe like that hypothetically for  
8 example, that standing alone might show someone's  
9 propensity to commit future acts of violence?

10 A. Yes.

11 Q. Okay. And then finally on Special Issue No. 1,  
12 it says: That would constitute a continuing threat to  
13 society. And would you agree with me, Ms. Pyper, that  
14 society can mean many different things?

15 A. Oh, yes.

16 Q. It can mean the streets that we walk around in  
17 in Houston. It can mean society within prison, whether  
18 that be guards, other employees, fellow inmates in  
19 prison.

20 A. Yes.

21 Q. Okay. So, as a jury, if you hear evidence that  
22 leads you in a direction to answer that question with a  
23 "yes," then you would move on to the second question.  
24 And the Judge spoke to you a little bit on Monday about  
25 the issue -- or the concept of law of parties and

1 accomplices. And in many ways, this question is very  
2 similar to that.

3 A. Uh-huh.

4 Q. But just like with that first question, you  
5 have to take this second question independently. You  
6 can't just automatically answer "yes" to this question.  
7 You have to evaluate this question independently. And,  
8 again, it has that same burden of proof, beyond a  
9 reasonable doubt. And you, as a jury, have to decide  
10 first if you believe that the defendant actually caused  
11 the death of the deceased in the case. But then based  
12 on some of those ideas of law of parties and  
13 accomplices, you heard the Judge tell you it doesn't  
14 necessarily have to be them actually causing the death.  
15 They could have intended the death of the deceased.

16 A. Right.

17 Q. Or possibly even another person. Or  
18 anticipated that a human life would be taken under the  
19 circumstances. Are those concepts that you are  
20 comfortable with?

21 A. Yes.

22 Q. And a little bit going back on that --  
23 actually, let me continue with that and I'll go back to  
24 this in a minute. But after you come to a determination  
25 on that question and you, as a jury, evaluated the



1 evidence and the evidence leads you in a direction to  
2 answer that question with a "yes," then you move on to  
3 the third question.

4 A. Correct.

5 Q. Now, if you think about where you are at in the  
6 process, you, as a jury, beyond a reasonable doubt have  
7 found the defendant guilty, you have answered that first  
8 question with a "yes," we believe there is a probability  
9 he would be a continuing threat, you have answered that  
10 second question with a "yes," that he either actually  
11 caused the death, he intended to, or should have  
12 anticipated it. So, you are one question away from  
13 essentially sentencing the defendant to the death  
14 penalty that would lead to his execution. So, the third  
15 question is an independent question as well. You've got  
16 to step back. It basically has you evaluate all of the  
17 evidence -- and we'll talk about that -- and determine  
18 if there is some sufficient mitigating circumstances or  
19 circumstance that would warrant something less than the  
20 death penalty. And in this case, we know we're talking  
21 a life sentence with parole eligibility after 35 years.

22 A. Uh-huh.

23 Q. You follow me?

24 A. Uh-huh.

25 Q. One difference is there is no burden of proof.

1 There isn't that beyond a reasonable doubt standard.  
2 But the question itself kind of tells you where to look  
3 to help answer this question. The question tells you  
4 that you are to evaluate -- as a jury, you are to  
5 evaluate all of the evidence. That can be the  
6 circumstances of the actual offense, that can be  
7 something you might have learned about the defendant's  
8 background or character. You know, like we talked about  
9 in the punishment phase, you might learn some of that.  
10 It might be what was his moral culpability in all of  
11 this, how involved was he, what role did he play in all  
12 of this?

13 And in evaluating all of that, you have to  
14 decide if there is some kind of sufficient mitigating  
15 circumstance or circumstances that would warrant a life  
16 sentence rather than the death penalty. And you would  
17 agree with me, wouldn't you, Ms. Pyper, there are a lot  
18 of things that could be considered mitigating  
19 circumstances?

20 A. Sure.

21 Q. You probably have a lot of insight into this,  
22 in dealing with some of the difficult situations that  
23 you deal with in the schools. Sadly, you probably deal  
24 with a lot of troubled kids, right?

25 A. Uh-huh.

1 Q. That come from some pretty horrible  
2 backgrounds.

3 A. Yes.

4 Q. You know, many things could be considered a  
5 mitigating circumstance. It could be something as  
6 extreme as, you know, mental illness. That might play a  
7 part, right?

8 A. Yes.

9 Q. You are probably familiar -- do you remember  
10 the Andrea Yates case --

11 A. Yes.

12 Q. -- where she drowned her five kids. Tragic  
13 situation. Clearly, she committed those acts.

14 A. Right.

15 Q. She admitted to it, but through her trials,  
16 trial of trials, it came out and was evident, her mental  
17 illness. So, that might be a mitigating circumstance  
18 that a jury considers. But a skilled lawyer can say  
19 pretty much anything is a mitigating circumstance. You  
20 know, I mean, you can look at this in a real-world  
21 example. A history of drug abuse might be considered a  
22 mitigating circumstance, but, on the other hand, someone  
23 that's been clean and sober and not used any drugs could  
24 also be argued -- arguably a mitigating circumstance.

25 A. Right.

1 Q. Or a tight family unit that's in place could be  
2 a mitigating circumstance.

3 A. Correct.

4 Q. Or a broken background, right?

5 A. Uh-huh.

6 Q. Like I was saying before, you deal with kids  
7 that have been in some really awful circumstances --

8 A. Yes.

9 Q. -- in the line of work that you do. But not  
10 every child who has come from a broken home or grows up  
11 with an addiction to drug abuse is going to go out and  
12 commit capital murder, are they?

13 A. No.

14 Q. So, as a jury, that word "sufficient" has to be  
15 taken into consideration because it has to be sufficient  
16 in light of all of those things we've talked about -- in  
17 light of the offense, in light of all of the evidence --  
18 in order for you to say a life sentence is more  
19 appropriate than the death sentence.

20 THE COURT: Five minutes, Mr. Wood.

21 MR. WOOD: Thank you, Your Honor.

22 Q. (By Mr. Wood) Is that process something that  
23 you think you would be okay with?

24 A. Uh-huh.

25 Q. While difficult, that you could do?

1 A. Yes.

2 Q. Okay. Going back to that Special Issue No. 1.  
3 You know, that's probably one of the biggest  
4 considerations you would have as a juror once you found  
5 a person guilty. And some defense attorneys would say  
6 that you have just found someone guilty of capital  
7 murder, can you ever envision any circumstance or  
8 circumstances where you personally, Ms. Pyper, would say  
9 that that person is not a continuing threat to society.

10 A. Probably not.

11 Q. Well, that's a difficult thing, especially in a  
12 vacuum when you don't know anything.

13 A. Right.

14 Q. Are you familiar with the story of "A Time to  
15 Kill"?

16 A. No. I have heard of it, but...

17 Q. First a book and then a movie.

18 A. Uh-huh.

19 Q. And the circumstances around that case which we  
20 have to look at as -- you know, I'm just throwing that  
21 out there as a possible hypothetical case. But that  
22 situation -- or in that story, two gentlemen went on  
23 trial for raping a man's daughter. And there was a lot  
24 of other stuff going on, but in the course of that, the  
25 rape victim's father laid in wait outside of the

1 courtroom and guns down and kills the two rapists.

2 Clearly, in Texas that would be capital murder. Right?

3 Killing two individuals in the course of, you know, the  
4 same transaction, basically.

5 Now, take in this hypothetical situation  
6 that this is not a person with a history of criminal  
7 activity, this is a father.

8 A. Right.

9 Q. In Texas, that would be capital murder. Now,  
10 we can say whether or not we'd seek the death penalty or  
11 not, but in a hypothetical situation the State could  
12 seek the death penalty in that case.

13 A. Uh-huh.

14 Q. Is that a situation --

15 MR. CORNELIUS: That calls for a  
16 commitment.

17 THE COURT: Yes, I agree. Don't ask for a  
18 commitment on that. You can use that as a hypothetical,  
19 but do not ask a commitment question.

20 Q. (By Mr. Wood) Considering that hypothetical, or  
21 any other set of circumstances, any other set of facts  
22 in your mind that you can consider, can you think of a  
23 situation where you might not automatically -- where you  
24 would not automatically say "yes" to this question just  
25 because someone is guilty of capital murder?

1           A.    It would probably depend on the case, but  
2 probably.

3           Q.    Yes.   And that's a -- right now where you sit,  
4 that's all we can say is that I would have to ask that  
5 you evaluate the evidence --

6           A.    The evidence.

7           Q.    -- and the circumstances and the facts and  
8 evidence that you hear as a jury.   But can you keep an  
9 open mind to that where you sit now, that you would be  
10 open to that possibility?

11          A.    Yes.

12          Q.    And that you would only answer that question  
13 after you have evaluated the evidence and the facts  
14 before you --

15          A.    Yes.

16          Q.    -- in that particular case?

17          A.    Yes.

18          Q.    And they kind of come -- they kind of are very  
19 closely related, but the same thing on the mitigation  
20 issue, that third special issue question that you would  
21 be asked to answer.   Again, will you commit to me that  
22 you would not automatically answer that question "no"  
23 just because you found somebody guilty of capital  
24 murder, just because you have found there's a probability  
25 they will be a continuing threat, that you won't

1 automatically answer that question "no," but that you  
2 will evaluate the evidence?

3 A. Yes.

4 Q. Ms. Pyper, I'm just about done. This is the  
5 last shot that I have for you to tell me if there is  
6 anything that you want to share or there's anything I  
7 have not asked that you think I should have asked.

8 A. No.

9 Q. Okay. Well, I sure appreciate your answers and  
10 your time.

11 A. Thank you.

12 MR. WOOD: I pass the juror.

13 THE COURT: Mr. Cornelius.

14 MR. CORNELIUS: Yes, Your Honor.

15 THE COURT: You may proceed.

16 **VOIR DIRE EXAMINATION**

17 **BY MR. CORNELIUS:**

18 Q. Ms. Pyper, I'm Skip Cornelius. And we're going  
19 to get to ask you some questions now. I hope it doesn't  
20 take 30 minutes. Mario Madrid is across the table as  
21 co-counsel. And Obel Cruz-Garcia is on my right. Why  
22 don't you sit back and tell me about the life and times  
23 of Nancee Pyper.

24 A. I have been a schoolteacher for 21 years. Part  
25 of that time, I worked with difficult children. For



1 four years, I had third, fourth, and fifth graders from  
2 the Cy-Fair district that had either committed a code of  
3 conduct violation or persistent misbehaviors. That  
4 would be the reason they would come into my classroom.  
5 And I had them the entire school day building social  
6 skills and helping them see a reason to be successful  
7 back in a regular classroom.

8 Q. Do you like doing that?

9 A. I do.

10 Q. Do you get some success out of it?

11 A. Hope so. I feel that we do.

12 Q. Do the kids sometimes get turned around?

13 A. Sometimes. A lot of times it depends on the  
14 home front, which is, you know, the -- I can only do  
15 what I can during my eight-hour day.

16 Q. Go back to Montana. How long did you live in  
17 Montana?

18 A. Less than six months.

19 Q. Okay.

20 A. No memory of it other than birthplace.

21 Q. And so, where did you live?

22 A. Pretty much in the Houston area most of my  
23 life.

24 Q. Okay. All right. Your family, what -- I know  
25 you were asked this question before, but anybody in your

1 family -- or let's not even limit it to family. Close  
2 friends or relatives. Has some pronounced feeling about  
3 capital punishment for or against?

4 A. Not one way or the other, no.

5 Q. Nothing happened in your life that would maybe  
6 have an impact on you as to whether you'd be for it or  
7 against it?

8 A. No.

9 Q. You ever -- when is the last time you recall  
10 ever having a conversation with anybody about capital  
11 punishment?

12 A. Well, of course, talking to my husband about  
13 the possibility of this jury.

14 Q. Before that.

15 A. Before that? Don't really have a recollection.  
16 I know the last time I was on a panel similar to this  
17 was around the Andrea Yates time.

18 Q. Was it the Andrea Yates panel or a different  
19 one?

20 A. I was actually in the jury room that same day.  
21 They supposedly picked the last grouping from a panel  
22 similar to this that morning. I was here in the  
23 afternoon. So, that was obviously --

24 Q. Pretty close?

25 A. -- pretty close.

1 Q. Okay. Anything off the top that you can think  
2 of that maybe I ought to know in deciding whether to  
3 agree to put you on the jury?

4 A. Not that I can think of.

5 Q. Okay. I'm going to shift gears a little bit.

6 A. Okay.

7 Q. In a normal jury selection, we have a panel and  
8 they sit out there and we talk to them at the same time,  
9 maybe we have a few individual questions to some of them  
10 for some reason, but because this is a capital case we  
11 talk to you individually, because people's views on  
12 capital punishment are pretty adverse and it's pretty  
13 important in a case like this. Here's my fear on that.  
14 We bring you in here -- first of all, we bombard you  
15 with questions about capital punishment, we bring you in  
16 here and bombard you all about capital punishment, even  
17 the defense side does. And my client is going to plead  
18 not guilty. And we're going to defend him to the best  
19 of our ability and try to convince a jury not to convict  
20 him. Do you understand that?

21 A. Yes.

22 Q. You think I ought to do that if I'm his lawyer?

23 A. If you are his lawyer, yeah. That's what you  
24 are here for.

25 Q. Do you have any problem with that?

1           A.    No.

2           Q.    I mean, we see really unusual answers on these  
3 questionnaires. Not yours, but on questionnaires. Some  
4 people really don't think everybody deserves to have a  
5 lawyer. And so, I'd like to have an understanding with  
6 you that I have to do my duty and you expect me to do my  
7 duty.

8           A.    Correct.

9           Q.    How would you feel, hypothetically, if you were  
10 on the jury and you go back to deliberate on the case  
11 and you realized that the State has a pretty good case,  
12 but maybe a really good case, maybe you really think the  
13 defendant is guilty in that case, but the defense didn't  
14 do anything, they were terrible, they didn't ask  
15 questions on cross-examination, they didn't call any  
16 witnesses, they really didn't do anything to defend  
17 their client? That wouldn't feel very good, would it?

18          A.    No.

19          Q.    And if you convicted that guy knowing he really  
20 didn't get a fair trial, how would that make you feel?

21          A.    I would probably put it more on the defense  
22 than on the way the trial went.

23          Q.    Well, wouldn't it feel better if both sides --  
24 you knew both sides were doing their very best to  
25 represent their side?

1 A. Sure.

2 Q. Their best to represent the State, we're doing  
3 our best to be a defensive team.

4 A. Uh-huh.

5 Q. And then you'd fairly evaluate the evidence,  
6 and whatever you decide you decide, but that is the way  
7 it's supposed to work. Do you agree with that?

8 A. Yes.

9 Q. Okay. Well, we're going to do that. I tell  
10 you that because I want to understand and I want to feel  
11 like that you expect me to do my job. And also I want  
12 you to understand that if I talk to you about capital  
13 punishment, it's not because I expect to lose. It's  
14 just that we don't have two juries. We don't have a  
15 jury on guilt or innocence and then if there is a  
16 conviction we pick another jury to set the punishment.

17 A. Correct.

18 Q. So, if we have questions of jurors about  
19 punishment, we have to ask them now. Before we get into  
20 that, though, you know that this allegation is one that  
21 alleges that the crime occurred in 1992. Now, I would  
22 be afraid that a jury might give the State some extra  
23 credit because it's probably pretty hard or at least  
24 harder to try a 1992 case than, let's say, a 2012 case.  
25 Maybe not. There may be a better 1992 than 2012, but

1 just in averages -- and we can't talk about this case at  
2 all. You can see there could be problems with  
3 presenting a 1992 case?

4 A. Possibly, but I would expect the same as if it  
5 happened yesterday and was in trial.

6 Q. You anticipated my question. I don't want you  
7 to -- well, I hope that you wouldn't give the State some  
8 extra credit or extra benefit or reduce their burden a  
9 little bit because it's a 1992 case.

10 A. No.

11 Q. Okay. There is a scale on our form here.  
12 Actually, it's two scales.

13 MR. CORNELIUS: And, Judge, can she look at  
14 your page?

15 THE COURT: Which page? Page 11? No. 70?

16 MR. CORNELIUS: Page 9.

17 THE COURT: I will turn to Page 9. The  
18 only thing I have written on here is the times that we  
19 started.

20 Q. (By Mr. Cornelius) We have these two scales on  
21 there. Do you remember them? I'm not going to ask you  
22 to tell me what they are, but do you remember reading  
23 that?

24 A. Yes.

25 Q. There are two scales. The first one is asking

1 about your general views -- you see it up there at the  
2 top -- general views about capital punishment?

3 A. Yes.

4 Q. And the first answer is: I'm opposed to  
5 capital punishment in all cases, and it says some other  
6 things. And the fifth is: I'm strongly in favor of  
7 capital punishment as an appropriate penalty. And you  
8 picked number five.

9 A. Correct.

10 Q. Okay. And I don't have a problem with that,  
11 but unless you are telling me that you are strongly in  
12 favor of capital punishment in all cases.

13 A. That's not what's written here. That's not how  
14 I read it.

15 Q. All right. Because the second scale doesn't  
16 exactly address that, but it comes a lot closer. It  
17 says -- it's talking about determining the punishment  
18 and asking you which one of the examples fits and you  
19 picked number three.

20 A. Correct.

21 Q. Which is basically it depends on the facts.  
22 You are not -- it's not that you can do it, it's not  
23 that you would always do it. It's not that you would  
24 seldom do it or usually do it. You just don't know if  
25 you would do it or not till you hear the facts.

1 A. Exactly.

2 Q. Is that the truth?

3 A. Yes.

4 Q. Okay. You also made a comment on there -- and  
5 just take my word for it. You just checked the box that  
6 says our laws are too lenient.

7 A. At times, yes.

8 Q. At times. Okay. Are they ever too harsh?  
9 Ever heard of a case where somebody got more punishment  
10 than you thought they should have?

11 A. I can't think of one.

12 Q. Okay. Before she gives that back, I want her  
13 to turn to page --

14 THE COURT: Absolutely. Just keep it until  
15 he is finished with his questions.

16 Q. (By Mr. Cornelius) Page 11, Question No. 70. I  
17 did not write this questionnaire. I've not contributed  
18 a word to the questionnaire. I'm not criticizing the  
19 questionnaire, but I am -- Question No. 70 is kind of  
20 difficult. Do you remember going through that series of  
21 questions?

22 A. Yes.

23 Q. Well, the most important one is down here where  
24 it says F, number F, it says: A sentence of life in  
25 prison may or may not be the right decision, it depends



1 on the facts of the case. And that's what you checked.

2 A. Yes.

3 Q. You agreed with that --

4 A. Yes.

5 Q. -- correct?

6 Okay. Now, A and B are the same questions,  
7 just inverted. And D and E are the same questions, just  
8 inverted. I don't know why we need to do that, but we  
9 have for some reason. And you said that life  
10 imprisonment is not enough. And I assume you mean in  
11 every case. There may be some cases where life is not  
12 enough, might mean the death penalty.

13 A. Correct.

14 Q. Okay. What I want to hone in on a moment is  
15 this business about whether it's wasteful -- D, go to  
16 D -- whether it's wasteful to support people in prison  
17 because that sort of implies that it might be just more  
18 logical to give them the death penalty because it costs  
19 too much to support them in prison. And that's kind of  
20 what you -- by agreeing with that, that's kind of what  
21 you're saying, at least -- let me hear what you're  
22 saying.

23 A. Now that I understand the punishment phase and  
24 the choices of how it is determined, life in prison  
25 versus the death penalty, I understand a little bit

1 more. However, I do feel that from my previous  
2 knowledge of life in prison that sometimes, you know, it  
3 is -- I feel sometimes it is wasteful of taxpayers  
4 money.

5 Q. Okay. As opposed to giving the death penalty?

6 A. If it were an option, yes.

7 Q. Now, making that empirical calculation as to  
8 cost, what information would you have that would let you  
9 know whether it would cost more to actually prosecute  
10 somebody for the death penalty and carry that all the  
11 way out through the appellate processes and have to  
12 support them all that time -- because you know it takes  
13 a long time before somebody actually gets executed.

14 A. True.

15 Q. And have to support them all of that time in  
16 prison, because it would only after they got executed  
17 that it would cost any more money, a dollar more, to  
18 continue to support them in prison. You follow me?

19 A. Yes.

20 Q. What are you basing the fact that you think  
21 it's more expensive to keep them in prison for however  
22 long they would live versus --

23 A. Hearsay.

24 Q. Okay. All right. Can you see kind of where  
25 I'm going with that question?

1           A.    Uh-huh.

2           Q.    I mean, I can't give you any of the facts or  
3 statistics or stuff.

4           A.    Right.

5           Q.    But I can tell you that there are people that  
6 would tell you that it's more expensive to actually  
7 execute somebody than to carry them in prison or provide  
8 them their food and prison or whatever.

9           A.    Correct.

10          Q.    Did you know that if they are actually given  
11 the death sentence, they go to death row, they don't  
12 work, there is no work for the prisoners --

13                   MR. WOOD:  Objection, Your Honor.  This is  
14 improper.

15                   MR. CORNELIUS:  Well, if she knows.

16                   THE COURT:  Sustained.

17          Q.    (By Mr. Cornelius) Do you have any -- when  
18 you -- of course, we didn't ask anybody if they had any  
19 information about this stuff.  And I don't know who  
20 would have information about this stuff, but I'm just  
21 asking:  Do you know what happens with the prisoners  
22 when they are in prison in terms of how they work or if  
23 they work?

24          A.    No.

25          Q.    Okay.  All right.  The parole laws.  Because of

1 the fact that this allegedly occurred in '92, we have to  
2 go on '92 law. And at that time if somebody received a  
3 life sentence for the offense of capital murder, they  
4 have to serve 35 calendar years before they can be  
5 consider for parole. It doesn't mean they get out in 35  
6 years. And the charge that the Judge would give in  
7 relation to the parole laws would be that you are  
8 entitled to know what the law is, but you are not  
9 entitled to consider it in determining what the  
10 punishment ought to be.

11 In other words, the law is that a juror has  
12 a right to know what the parole laws are, but they can't  
13 consider it in deciding to give, say, a death sentence  
14 because they don't like the parole laws. And  
15 particularly in a situation where life is involved,  
16 because there is no guarantee anyone ever gets parole on  
17 a life sentence. Did you know that?

18 A. It's a possibility, right?

19 Q. It's a possibility. There's no mandatory  
20 parole for a life sentence, ever.

21 A. Right.

22 Q. And if you add 35 years, whoever it is that is  
23 on trial, would you concede they might not live that  
24 long in prison?

25 A. Possibly.

1 Q. Do you see a life sentence as being a  
2 significant punishment?

3 A. Yes.

4 Q. All right. Going back to guilt or innocence.  
5 And also in answering Question No. 1 and No. 2, I'll go  
6 back in a moment to the actual questions, but there is a  
7 proof beyond a reasonable doubt standard. And you knew  
8 that before you came here. You've heard that term,  
9 correct?

10 A. Yes.

11 Q. The law doesn't define what that is. The law  
12 has defined it before a couple of different times with a  
13 couple of different definitions, but there's not one  
14 now. We've had a definition, not a definition, we had a  
15 definition, not a definition. We've had various things  
16 in the law, but for some time now our state offers no  
17 definition to the jury. It's whatever the jury  
18 believes in their own heart and their own mind is proof  
19 beyond a reasonable doubt. What it takes for you to be  
20 convinced beyond a reasonable doubt. It can be  
21 different for every juror. On the guilt or innocence  
22 part of the case, a juror -- I'm not saying you -- a  
23 juror back in the jury room can say at the end of the  
24 day: I have heard all of the evidence in the case, I  
25 have listened to every word the State said, I've listen

1 to every word the defense said, I have listened to every  
2 word the juror has said, and I'm not convinced the  
3 person is guilty, I have a reasonable doubt, I'm a  
4 reasonable person, I have reasonably applied everything  
5 in this case, and I have a reasonable doubt, I'm not  
6 going to convict. And that might be that person's  
7 definition of what constitutes proof beyond a reasonable  
8 doubt.

9 Another juror might say in the jury room:  
10 I have a reasonable doubt, I'm not going to convict, and  
11 I don't feel like I have to tell you why. And they  
12 don't. I mean, you would not have to tell other jurors  
13 why you have a reasonable doubt. That would be your  
14 right. I would encourage and always encourage the jury  
15 to talk to each other and cooperate with each other and  
16 respect each other. Because everybody on the jury has  
17 exactly the same right, even the foreman. No one has  
18 any more right than anybody else.

19 A. Uh-huh.

20 Q. And I find that if a jury respects each other,  
21 it's more likely they'll get a verdict. I'm not saying  
22 that because it's helpful to me or the State. Just more  
23 likely going to get a verdict. But a juror doesn't have  
24 to tell what their reasonable doubt is. Another juror  
25 might say: Well, I have a reasonable doubt because I

1 didn't believe a particular witness in a case. And that  
2 witness was testifying to something material, an element  
3 to the case, and I don't find anything that proves it, I  
4 don't believe that witness.

5           For example, hypothetically, the State may  
6 call a co-defendant to establish the identity of who  
7 committed the crime. Maybe that's the only way they can  
8 prove it. And the juror says: I don't believe them,  
9 they have too much to gain, I don't believe them, it's  
10 just too convenient for them to put it all on the person  
11 on trial and that causes me to have a reasonable doubt.  
12 That's my reasonable doubt. And the sky is the limit on  
13 the reasons it could be for somebody to have a  
14 reasonable doubt. If everybody on the jury has a  
15 reasonable doubt, then the verdict is supposed to be not  
16 guilty. Do you know that?

17       A. Uh-huh.

18       Q. And do you agree with that?

19       A. Yes.

20       Q. If that -- if you were in that group and had a  
21 reasonable doubt, could you vote not guilty?

22       A. If I had a reasonable doubt, yes.

23       Q. And can you imagine that happening?

24       A. Sure.

25       Q. I mean, if the State doesn't prove it to you,

1 no matter how hard they try, how nice they are, or how  
2 professional they are, if they just can't get to your  
3 standard, can you vote not guilty?

4 A. Yes.

5 Q. Okay. What if you are -- what if there is only  
6 four voting not guilty and eight voting guilty, you've  
7 given all eight an opportunity to change your mind, but  
8 you are stuck on not guilty, would you hold your  
9 position?

10 A. It would depend on the situation.

11 Q. Well, maybe they could change your mind, but  
12 what if they didn't change your mind, you still had a  
13 reasonable doubt?

14 A. If we discussed it and my reasonable doubt was  
15 changed, I could possibly change the other way myself.  
16 You know, I could see it going either way, where they  
17 could sway me their way, I could sway them mine.

18 Q. Well, that's good. I like that you are  
19 reasonable. I like that. But my hypothetical is -- I'm  
20 affixing you. I'm saying that everybody has tried  
21 everything they could do to sway you either for guilty  
22 or for not guilty and you are stuck wherever you are.  
23 They are not able -- I mean, after 18 hours of  
24 deliberation, 46 hours, whatever the deliberation,  
25 whatever it is, you are stuck on the fact that you have



1 a reasonable doubt.

2 A. Then I stay stuck on reasonable doubt.

3 Q. Okay. And even if you are the only one?

4 A. Uh-huh.

5 Q. You think you are strong enough to do that?

6 A. If that was my feeling.

7 Q. Okay.

8 MR. CORNELIUS: Can we have -- well, that's  
9 all right.

10 Q. (By Mr. Cornelius) I'm going to go over the  
11 special issues with you for a moment.

12 A. Okay.

13 Q. That No. 1 -- Mr. Wood did a great job  
14 questioning you about No. 1 and anticipating what my  
15 question is going to be. Of course, we do this over and  
16 over. It wasn't a surprise as to what I'm going to ask,  
17 put it that way. I just have to hear it for myself.  
18 And I really don't want to try to commit you to a  
19 Hollywood movie or a book that someone wrote. This is  
20 what I want to try to commit you to in my hypothetical.

21 I want you to assume that you are selected  
22 next year on a capital murder case. Don't want to talk  
23 about this case because I can't. And you hear the  
24 evidence in that case. Say, it's an alleged murder  
25 during a kidnapping or a murder -- some other capital

1 murder, but maybe it's a murder during an alleged  
2 kidnapping or an alleged murder during an alleged  
3 killing {sic} and you hear all of the evidence in the  
4 case and you go back and deliberate and you and all  
5 eleven of the other jurors convict that person of  
6 capital murder.

7                   So, are you with me? I mean, you are  
8 there, you've convicted of him of capital murder. It's  
9 not a movie, it's not a book.

10       A.    Okay.

11       Q.    You have convicted that person. So, only then  
12 would you ever be asked Question No. 1.

13       A.    Right.

14       Q.    And it has to be proven beyond a reasonable  
15 doubt, but could you -- as Mr. Wood asked you in that  
16 situation, if you're really there, could you imagine  
17 yourself ever voting "no" that there is not even the  
18 probability that the person would be a continuing  
19 threat?

20       A.    It would depend on the facts of the case.

21       Q.    Well, of course it would. But could you  
22 imagine -- I mean, you know you and I don't know you.  
23 And you know -- and it's hard for you to even know --  
24 I'm going to concede this. It's hard for you to know  
25 what you'd do when you are not there yet, not in the

1 facts.

2 A. Right.

3 Q. But --

4 A. It would depend on the facts of the case and  
5 whether or not -- with the background evidence and that,  
6 whether I felt that there was a continuing threat, as  
7 it's written.

8 Q. I understand, but could you ever imagine  
9 yourself not finding he would be a continuing threat?

10 A. I'm not sure how to answer that.

11 Q. Well, let me tell you where I am. Try to  
12 understand from my standpoint, if you don't mind. I  
13 don't want to put somebody on the jury -- just to be  
14 honest. It's not personal against you, but who -- you  
15 know, originally you told Mr. Wood that you couldn't  
16 imagine finding it not true. And that's what you  
17 originally said to him. And then he gave you the idea  
18 of a Hollywood movie. And I'm not trying to commit one  
19 way or another, but I really want to know. If it's  
20 really not possible -- I mean, some people say the  
21 greatest indication of what someone will do in the  
22 future is what they have done in the past. I mean,  
23 professionals say that. And that's -- our law doesn't a  
24 allow it to be that way, for you to automatically say  
25 there's at least the probability that they will be a

1 continuing threat, but you know yourself. And if you  
2 have convicted someone of capital murder, are you going  
3 to always say "yes" to Special Issue No. 1?

4 A. No.

5 Q. You are not?

6 Because -- tell me why, why you wouldn't  
7 automatically answer that "yes."

8 A. Because I'm going to look at the evidence, and,  
9 you know, if it's a one-time thing, there might be  
10 situations that it might have been a one-time thing, but  
11 it falls under the realm of capital murder, that it  
12 might be where we feel that life in prison was  
13 sufficient.

14 Q. Okay. I accept that.

15 Now, I want to move to Special Issue No. 3  
16 if Justin will put it back up there.

17 THE COURT: Five minutes.

18 MR. CORNELIUS: Pardon me?

19 THE COURT: Five minutes.

20 MR. CORNELIUS: Okay. I will be done.

21 Q. (By Mr. Cornelius) Now, what I want to talk to  
22 you about this, I think -- I know you understand the  
23 question. I want to talk about sufficient, the word  
24 "sufficient." When the Supreme Court mandated this  
25 question, everybody has to have this -- every state, the

1 federal government, everyone has to have this question  
2 in a capital murder case before the death penalty could  
3 ever be inflicted. A jury has to look at the evidence,  
4 stop, take a deep breath, look at all of the evidence  
5 again, and decide if there is any reason to turn away  
6 from the death penalty. Because by the time you would  
7 be answering this question in a capital case, you  
8 would -- and the other jurors would have convicted,  
9 found "yes" that the person is going to be a continuing  
10 threat, found "yes" that either he caused the death or  
11 participated in the death. Okay? And now he is on his  
12 way to a death sentence except for this one question.

13 A. Correct.

14 Q. What I see the State doing in cases past and in  
15 this case is talking a lot about what would be  
16 sufficient. And they have a right to talk about that  
17 because that's what the question says. But I want you  
18 to understand or see if you agree with me that it's not  
19 mitigation that's sufficient to overcome the crime. I  
20 mean, nothing is ever going to overcome the crime or  
21 make it all right. It's what would be -- and, again,  
22 it's like reasonable doubt. It's not defined for you,  
23 what would be sufficient. It just gives you the  
24 opportunity to turn away from a death sentence.

25 Again, you wouldn't have to explain why or

1 you could explain why. Each juror could have a  
2 different reason. They could explain it or not explain  
3 it, but it gives the jury an opportunity to say: This  
4 is a horrible crime, he did it, he is on his way to a  
5 death sentence, but I find for some reason not to take  
6 his life. Could you do that?

7 A. Yes.

8 Q. I mean, if you got that far with it, could you  
9 say -- I'm not asking why you would or -- but could you  
10 say: I could vote to essentially -- by this you're  
11 voting to take his life or not, but I'm not.

12 A. Uh-huh.

13 Q. Could you see yourself doing that?

14 A. Yes.

15 Q. Okay. Do you have any questions?

16 A. No.

17 Q. This is your last chance to ask me a question  
18 if you have one.

19 A. No.

20 MR. CORNELIUS: Okay. I'll pass the juror,  
21 Judge.

22 THE COURT: Okay. And if you would step  
23 out just a moment this side door. Deputy Perry is going  
24 to help you out there. We'll be calling you right back  
25 in in a few moments.

1 (Venireperson exits courtroom).

2 THE COURT: As to Juror No. 64, Nancee  
3 Pyper, what says the State?

4 MR. WOOD: The State accepts Juror No. 64,  
5 Ms. Pyper.

6 MR. CORNELIUS: We're going to accept her  
7 also, Judge.

8 THE COURT: Very good.

9 Bring Ms. Pyper back in, please.

10 (Venireperson enters courtroom)

11 THE COURT: Ms. Pyper, you have been  
12 selected as a juror in this case, the State of Texas vs.  
13 Obel Cruz-Garcia.

14 First off, I'm going to give you some  
15 admonishments. It's very similar to the ones we have  
16 given you before, but it goes like this. As a  
17 prospective juror, you must not read, watch, or listen  
18 to anything regarding this case. You are not to engage  
19 in any social media outlets, including Facebook,  
20 Twitter, etcetera, about your status as a juror in this  
21 case. If you encounter anything about this case,  
22 including but not limited to casual conversation,  
23 stories in the media, or exposure to any type of  
24 information or from any source, immediately end the  
25 encounter. You may only receive information from

1 official court proceedings. Do not discuss the case  
2 with anyone, including other prospective jurors.

3           It is just best if -- your employer, just  
4 tell them you are on jury duty and it will be this  
5 amount of time, but don't even talk about the case at  
6 all -- same with your husband, same with -- until it is  
7 over. Now, the trial will begin promptly at 10:00 a.m.  
8 on Monday July 8th, 2013. We talked about that date.  
9 It's not going to be in this courtroom. It will be in  
10 my courtroom on the 15th floor. As it says right here,  
11 same building. In fact, Deputy Perry is going to take  
12 you down there today after we excuse you and we get the  
13 other juror in here. He will give you a juror badge.  
14 You will want to wear that whenever you are in the  
15 building. It does a couple of things couple of things.  
16 It tells everybody around you that you are a juror and  
17 so they are more likely not to say stuff in front of you  
18 that they shouldn't.

19           As you've probably seen in this building,  
20 everybody rides the elevators. So, jurors are on there,  
21 prosecutors are on there. About the only people that  
22 aren't are judges and the judge's court staff. But you  
23 are in there with a lot of people. So, it tells people:  
24 Hey, I'm a juror, don't say stuff around me. It also  
25 helps you get through security a little faster. My



1 understanding is you can go to the front of the line if  
2 you have that badge on. So, that's great. So, wear it  
3 whenever you are here.

4 And be here promptly at 10:00 a.m. on that  
5 Monday. There are two emergency numbers. Deputy  
6 Perry's. That's his cell number. And then my court  
7 coordinator. That will be ringing at the courtroom.  
8 So, you usually only work during the day, but that's  
9 available to you, too, if you need to leave us any  
10 instructions.

11 Do you have any questions?

12 VENIREPERSON: No.

13 THE COURT: Okay. Very good. Good luck to  
14 you. We'll see you on the 8th.

15 (Venireperson exits courtroom)

16 THE COURT: We're ready for Juror No. 72,  
17 Keith Evans Bowers.

18 (Venireperson sworn)

19 **KEITH BOWERS, VENIREPERSON NO. 72,**  
20 was called as a prospective juror, and testified as  
21 follows:

22 **VOIR DIRE EXAMINATION**

23 **BY THE COURT:**

24 Q. Good afternoon, Mr. Bowers.

25 A. Good afternoon.

1 Q. Thank you for coming in early. We almost got  
2 to you early, but everything sped up. We should get you  
3 out of here earlier.

4 A. That's good.

5 Q. I need to make sure you are the same Keith  
6 Bowers, Juror No. 72, that was called over in venire of  
7 the State of Texas vs. Obel Cruz-Garcia?

8 A. I am.

9 Q. Very good.

10 And you heard my general voir dire on  
11 Monday, June 3rd. This is a continuation of that  
12 process. One of the attorneys from each side will have  
13 an opportunity to speak with you today. I'm going to  
14 hold them to 30 minutes each. They might be shorter  
15 than that. And they are going to ask you questions  
16 concerning the same topics that I already discussed, but  
17 it will be more towards your feelings, very personal to  
18 you. You are under oath to tell the truth, but there's  
19 really no right or wrong answer to this. It's just your  
20 general feelings about these laws and these concepts.  
21 Okay, sir?

22 A. Yes, ma'am.

23 Q. If you have any questions about what they are  
24 trying to ask, just ask them to rephrase it because  
25 sometimes it's not clear.

1                   Now, I have three questions I want to ask  
2 you.

3           A.   Who are the three people in the back?

4           Q.   Well, the prosecutors and other lawyers in the  
5 courthouse. They frequently sit in to watch different  
6 trials to learn and to --

7           A.   They're authorized?

8           Q.   They are authorized. We have open courtrooms  
9 in the state of Texas. So, people can come and as they  
10 please as long as they are quiet.

11                   All right. And this is the individual voir  
12 dire. The questions that I have for you is, first off,  
13 do you have any religious, personal, or moral reasons  
14 you would be unable to sit on a jury where the death  
15 penalty is a possible punishment?

16          A.   I do not.

17          Q.   And do you know of any reason why you could  
18 know be fair and impartial to both sides in a criminal  
19 case?

20          A.   No.

21          Q.   Have any of your questions from the  
22 questionnaire that you filled out last Friday, May 31st,  
23 changed?

24          A.   They have not.

25          Q.   Very good.

1                   We each have a copy of your questionnaire.  
2       So, if at some point they start asking about it and you  
3       need a copy, we'll provide that to you.

4           A.     Thank you.

5           Q.     And Ms. Tise is going to be talking to you.

6                   THE COURT:   I have 1:30, Ms. Tise.   You may  
7       proceed.

8                   MS. TISE:   Thank you, Judge.

9                               **VOIR DIRE EXAMINATION**

10       **BY MS. TISE:**

11           Q.     Good afternoon, Mr. Bowers.   Is that correct?

12           A.     Correct.

13           Q.     Thank you for coming back down here.   We really  
14       appreciate your cooperation.   I know you feel like you  
15       really didn't have a choice in the matter, but we  
16       appreciate that you are participating in the process.  
17       And, you know, some people don't show up for jury duty.

18           A.     I feel it's a very important obligation that we  
19       have to our legal system.

20           Q.     You are absolutely right.   And I wish more  
21       people felt that way.

22           A.     It works only as long as people stay involved.

23           Q.     That's absolutely true.   And we thank you for  
24       being here.

25                   I wanted to ask you a few questions about

1 your questionnaire. You say you are a managing director  
2 for B & B Suspension Technology Development?

3 A. Yes, ma'am.

4 Q. Can you tell me what that is, a little bit more  
5 about that?

6 A. I started a small business about 15 years ago.

7 Q. Okay.

8 A. And it's evolved to where we make the hydraulic  
9 accumulators that are used on adjustable heights  
10 suspension cars.

11 Q. Okay.

12 A. It's a very specialized business and we serve  
13 Lex LX-47, for instance. It's more exotic cars like the  
14 Porsche 959, etcetera.

15 Q. Okay. And what is a forensic -- what is  
16 forensic failure analysis mean?

17 A. If we have a failure in one of our parts, we  
18 want to know why.

19 Q. Okay.

20 A. They aren't supposed to break, aren't supposed  
21 to fail. And it's my job to figure out what happened.

22 Q. Okay. And you have an engineering background,  
23 I see.

24 A. Yes, ma'am.

25 Q. Okay. Where did you go to school?

1 A. McNeese in Lake Charles.

2 Q. Okay. Are you originally from Louisiana?

3 A. I am.

4 Q. Okay. What brought you here to Texas?

5 A. Employment. I was transferred. I was working  
6 in Baton Rouge and then took a job with Bechtol here in  
7 Houston. And spent most of my career with Bechtol.  
8 Took about a five-year sabbatical with MW Kellogg.

9 Q. Okay. One of the things that you put on your  
10 questionnaire and you kind of put yourself as in the  
11 middle with you're generally not opposed to capital  
12 punishment and that you will decide capital punishment  
13 based on the facts of the case, right?

14 A. Yes, ma'am.

15 Q. But there were a couple of questions on the  
16 questionnaire that gave me a little bit of concern about  
17 where you actually stood on that. And you understand  
18 that the whole purpose of this process is just for us to  
19 get a determination of how everybody feels so that we  
20 can determine who the best twelve people are to sit in  
21 judgment on this case. So, I'm not here to quibble with  
22 your answers or try to get you to answer a question in a  
23 way that makes me happy or Mr. Cornelius happy. I'm  
24 just trying to figure out where you are so I can make  
25 the appropriate decision with my case.

1           A.    Yes, ma'am.  I understand.  You have a right to  
2 have a fair and impartial jury.

3           Q.    And I appreciate that.  I noticed that you said  
4 that you felt like capital punishment has never been  
5 effective in preventing crime.  Can you elaborate on  
6 that a little bit for me?

7           A.    Typically, the time that elapses between the  
8 event and the execution is decades and people who were  
9 around the event, they are not around or they don't  
10 remember.  So, the people that are around at the  
11 execution event don't connect the two.  So, it's -- it  
12 has been shown that it is not effective in deterrence.

13          Q.    So, how do you think your position on that  
14 particular question would affect you if were a juror in  
15 this case?

16          A.    It wouldn't.  I mean, the law is the law.  We,  
17 the people, have rules.  And if people choose to violate  
18 those rules, we have to sanction their behavior,  
19 otherwise other people -- you know, we deteriorate into  
20 a mob instead of a society.

21          Q.    Fair enough.

22                    You also said that you felt like capital  
23 punishment was not necessary in modern civilization.  
24 Can you tell me what you meant when you said that?

25          A.    There are people that -- I want to call them

1 predators in their psychological makeup. Man is a very  
2 violent creature by nature. And I'm not sure that  
3 eliminating those people from society does anything to  
4 the people that are growing up. It may be better for us  
5 to incarcerate them working for the State somehow to  
6 help pay for their sustenance and care and keep. I'm  
7 not sure it works. You know, evidence says, well, it  
8 doesn't work, but, on the other hand, there are people  
9 that are not going to be rehabilitated. They are just  
10 savages.

11 Q. So, what do we do with those people?

12 A. Either lock them up in solitary or you execute  
13 them.

14 Q. Okay. You talked about a sentence of life in  
15 prison. This kind of goes hand-in-hand with what you  
16 were just saying, that a sentence of life in prison for  
17 someone convicted of capital murder is wasteful to  
18 society because we have to support that person in prison  
19 with taxpayer money. Tell me a little bit more about  
20 how you feel about that.

21 A. Well, I feel it's a fact. We don't do a good  
22 job of utilizing the labor and talents of that  
23 individual. We forget about them, throw them away, and  
24 then we take care of them. For some people, they  
25 consider that a pretty good life. They don't have to



1 worry about anything anymore.

2 Q. Right.

3 A. For the rest of us, incarceration is horrible,  
4 horrible to think of.

5 Q. Do you think your feeling on that would affect  
6 your decision in the case?

7 A. No, ma'am.

8 Q. Okay. You are not telling us that you would  
9 base a decision in this case on any economic factor?

10 A. No, no. It's based on the facts of the case.

11 Q. Okay. You know, there is some -- there is  
12 another question here on Page 12 of the questionnaire  
13 where we asked you to circle some statements that you  
14 agree with. And one of the ones that you failed to  
15 circle was the question that says: I would find someone  
16 not guilty even if it was unpopular if I thought it was  
17 the right decision.

18 A. I wouldn't consider whether it was popular or  
19 unpopular in making my decision. Public opinion doesn't  
20 bother me.

21 Q. But the question is: I would find someone not  
22 guilty even if it was unpopular if I thought it was the  
23 right decision. So, taking popular or unpopular out,  
24 would you find someone not guilty if it was the right  
25 decision?

1 A. Yes.

2 Q. Okay. That's why I was confused by that  
3 because it sounded like --

4 A. I understand. Unintentional oversight on my  
5 part.

6 Q. You said that you have children?

7 A. Yes.

8 Q. And you are married?

9 A. Yes.

10 Q. How many children do you have?

11 A. I have two by my first marriage and I have two  
12 stepchildren by my second marriage.

13 Q. Okay. And one of your children is a  
14 psychiatrist or --

15 A. Yes. The oldest is a clinical psychologist,  
16 PhD, practicing in New York.

17 Q. Okay. It looked to me that both of the  
18 children worked for you.

19 A. They are legally employees, yes. They get paid  
20 for their work.

21 Q. So, your oldest is your daughter and she works  
22 for you, but she's also a clinical psychologist?

23 A. No, no. Our oldest is not my natural child.  
24 It's a stepson.

25 Q. Oh, okay. And is that the one that's the

1 clinical psychologist?

2 A. Yes, it is.

3 Q. Okay. So, this is -- these are your kids that  
4 are your natural children?

5 A. Yes.

6 Q. Okay. And, you know, it's the elephant in the  
7 room and I hate to ask you this question and put you on  
8 the spot, but I understand that you have been convicted  
9 or you had a brush with the criminal justice.

10 A. A deferred adjudication. Successfully  
11 completed, completely rehabilitated. I have a much  
12 better relationship with my daughter than most fathers.

13 Q. Okay. And how long ago did that happen?

14 A. Twenty-seven, twenty-eight years.

15 Q. And what exactly was the deferred adjudication  
16 for?

17 A. It was for incest. I sexually molested my  
18 daughter.

19 Q. Okay. How old was she at the time?

20 A. Twelve.

21 Q. Okay. And you received deferred adjudication  
22 here in Harris County for that?

23 A. I did.

24 Q. Okay. And went through the process and --

25 A. Yes.

1 Q. And your deferred is terminated?

2 A. That is correct.

3 Q. Okay. Have you ever had any other criminal --

4 A. No.

5 Q. -- any brushes with the criminal justice  
6 system?

7 A. No.

8 Q. Okay. And I'm sorry to have to ask you that,  
9 but, you know, I'm not trying to put you on the spot.

10 A. Ma'am, I have been through enough therapy. I  
11 wanted to change. I came out of the military during the  
12 Vietnam era and I was an emotional wreck, is a good  
13 word. It took me 25 years to get me back.

14 Q. Okay. And I understand maybe that's how you  
15 know Ken and Judy Minkle (phonetic). They were your  
16 attorneys on the case?

17 A. Yes. I was also in therapy with them.

18 Q. Okay. So, here is my concern. And I'll  
19 probably -- you are a very intelligent person, I can  
20 tell, and very matter of fact. I don't have to tell you  
21 this. This is my concern. That your prior experience  
22 being on the other side of the table is something that  
23 you are not ever going to be able to separate yourself  
24 with and that you are going to carry your experience as  
25 being on the other side into this case with you. Tell

1 me how you would respond to that.

2 A. It caused me to change to a much better person.  
3 I was extremely depressed, but hiding it very well. And  
4 I was about to become a basket case from the emotional  
5 stress. I would have committed suicide shortly had I  
6 not been incarcerated and forced into therapy. I was  
7 already in therapy from my wife. Because it was an  
8 emotional -- I couldn't feel, let's put it that way. To  
9 suppress the anger that I carried out of the Vietnam  
10 era, is what I had to do. I had to just turn off my  
11 feelings. I was very good at it. It was a very  
12 effective tool for our government to use. Ruined me.  
13 And so, I had to rebuild me. And I worked very hard at  
14 it. And I don't blame the criminal justice system for  
15 what happened. I caused what happened. I was the  
16 perpetrator.

17 Q. And as a person who has been through the system  
18 and as a person who is and who finds yourself to be  
19 rehabilitated --

20 A. Oh, more than rehabilitated. Improved  
21 significantly.

22 Q. Okay. Okay. Fair enough. Here is what I'm  
23 thinking. I'm thinking that you might be a person who  
24 will go into this case with your mind set that anyone  
25 can't change and with your mind set that rehabilitation

1 should be afforded to anyone no matter how heinous the  
2 crime because of your personal experiences. How do you  
3 feel about that?

4 A. I know personally it takes a tremendous effort  
5 to change. You have to want to change. It's the old  
6 horse and watering story. Some people cannot. I was  
7 very fortunate to come under the care of Dr. David  
8 Mindel, who is the founder of Family Therapy in the  
9 United States. He is long dead. I don't think people  
10 can change unless they are forced to change and want to  
11 change. And I don't think most people have the ability,  
12 the emotional maturity and strength. It's scary when  
13 you are changing you. You realize you are a wreck and  
14 you want to change to something better. It's a  
15 terrifying process because you don't know what the  
16 outcome is. You have to give up who you are. Do I  
17 think most people can change? No. I think in our  
18 criminal justice system -- as a matter of fact, my  
19 stepson in New York has been in an incarceration  
20 intervention program where they evaluate people coming  
21 into the system and he decides -- tries to work out a  
22 therapy program for those who he believes can be dealt  
23 with outside of incarceration. But it has to be very  
24 selective. I cannot use it as an absolute and blanket.

25 Q. So, my thought and what we're trying to do is

1 we're trying to find jurors who will follow the  
2 evidence.

3 A. Absolutely.

4 Q. And who won't base their opinions on their own  
5 personal experiences, but will look at the evidence in  
6 this case. So, are you telling me and can you commit to  
7 me that you are not going to automatically find  
8 that everybody deserves a second chance?

9 A. Oh, no, ma'am. That's unreasonable. I'm a  
10 scientist by education and training and history. I'm a  
11 chemical engineer, a very successful project manager and  
12 senior executive for Bechtol. You make decisions based  
13 on facts, not wishes.

14 Q. Okay. If you were in charge of Texas -- let's  
15 say you were king. So, you didn't even have a  
16 Legislature. You just got to make the laws. Would you  
17 have the death penalty as part of the punishment that  
18 was available?

19 A. If it were the will of the people.

20 Q. Okay.

21 A. But if I was a dictator, I had absolute say --

22 Q. It's all up to you.

23 A. Well, I don't think we would have near as many  
24 capital cases because I would start and educate the  
25 children early. I would help mothers mother. There

1 would be a different early childhood education. And  
2 grants for people who needed -- or diversions for people  
3 who need additional help, but would I have it as the  
4 ultimate? I think so. That's part of our country's  
5 tradition. You know, we've always had that. And you go  
6 back and look in the very founding and it was used a lot  
7 more often than it is today.

8 Q. Okay. So, knowing that, where would you put  
9 yourself on a scale of one to ten; if one is a person  
10 who is opposed to the death penalty all the time in all  
11 cases, and ten is a person who is very much in favor of  
12 the death penalty, as strongly in favor as you can  
13 possibly be? And I'll take five off the table.

14 A. Well, give me a six.

15 Q. Okay.

16 A. A six is where I'd put myself.

17 Q. How do other members of your family feel about  
18 the death penalty feel, do you know?

19 A. I don't know if I can answer that question  
20 because I have not polled them on this.

21 Q. Okay. Fair enough.

22 A. I know my wife has sat on a jury before. I'm  
23 not sure how that one went out.

24 Q. Okay.

25 A. I really don't know. I think they would be



1     compassionate, but objective.

2             Q.     Okay. And your wife is still with you?

3             A.     Oh, yes, yes.

4             Q.     So, she must be a very forgiving person.

5             A.     Yes. She's a mother. Yes.

6             Q.     Do you feel that you are as forgiving?

7             A.     No.

8             Q.     Why not?

9             A.     I was trained to be able to make hard decisions  
10     based on facts. I was trained throughout my education  
11     to make -- follow evidence, make decisions, and judgment  
12     on what did the facts say. It's the scientific  
13     principle.

14            Q.     You know, we're talking about this as if it's  
15     some -- you know, just a philosophy class. But I like  
16     to bring it back to reality because, you know, you could  
17     be on the jury --

18            A.     Yes.

19            Q.     -- that has to follow through and it is not  
20     just a philosophical question anymore.

21            A.     Yes, ma'am. I understand.

22            Q.     So, knowing that, I'm going to ask you to take  
23     a look across the courtroom to this guy in the gold tie  
24     with the headset on. That's Obel Cruz-Garcia --

25            A.     Uh-huh.

1 Q. -- the defendant in this case charged with  
2 capital murder. Look at him and check your gut.  
3 Because what Mr. Wood and I want to know is that at the  
4 end of the day, if we've proved our case to you and show  
5 that the answers to those special issues are "yes,"  
6 "yes," and "no," the ones that the Judge talked to you  
7 about on Monday --

8 A. Yes.

9 Q. -- those answers are going to mean the death  
10 sentence for that individual right over there.

11 A. Yes, ma'am.

12 Q. He's a living, breathing human being. He has  
13 family or may not. You may hear that he has family.  
14 You may hear that he has children or a mother or a wife  
15 who care about him and love him. You may hear all kinds  
16 of things about him. But at the end of the day, if you  
17 answer those questions based on the evidence and it  
18 leads you to say "yes," "yes," and "no," that man will  
19 be executed. How do you feel about that?

20 A. It doesn't bother me emotionally. You have to  
21 remember I served in the military in a time that was  
22 very awkward.

23 Q. And I want to take you back to that --

24 A. And if the evidence -- I'm not going to cut you  
25 any slack. You have to prove it.

1 Q. I hear you.

2 A. If there is air and cracks through the case, he  
3 goes through it. That's the way it is. If you prove  
4 your case, it's done.

5 Q. Right.

6 A. It's not a personal decision. It's what the  
7 evidence says.

8 Q. Right. And I intend to. But what I want to  
9 know is -- and you talked about your Vietnam experience  
10 and you talked about how it changed you and how it made  
11 you a different person and how it led to things that I'm  
12 sure you wish you could take back. I'm concerned about  
13 that. Because I'm going to, at the end of this case --  
14 I'll make no bones about it. I'm going to ask you to  
15 answer those questions in such a way that it's going to  
16 lead to the death of Obel Cruz-Garcia. And are you  
17 going to relive what you went through before with your  
18 Vietnam experience and be tortured by that?

19 A. No.

20 Q. Why not? How is it different?

21 A. I had no choice when I was in the service. You  
22 serve at the will and pleasure of your commanders. It's  
23 a 24-7, 365, 100 percent commitment that you do what you  
24 are told. This concept of illegal orders doesn't apply  
25 to people who were doing what they're ordered to do. On

1 a three-star test, you go down the hall and to room so  
2 and so and then do what the two individuals do, ask you  
3 to do, or tell you to do, and he doesn't want to know  
4 what it is. You salute, say "yes, sir," and you go do  
5 it.

6 Q. Well, let me just draw some parallels here for  
7 you. Because you weren't forced to enlist, or were you?  
8 Were you --

9 A. Oh, I had a draft notice. I was going into the  
10 service one way or the other.

11 Q. You were drafted?

12 A. Absolutely.

13 Q. All right. And this is a particular case where  
14 once you take that oath of a juror, you are drafted.  
15 Okay? Once you take that oath. And if you find from  
16 the evidence that the answers to those questions are  
17 "yes," "yes," and "no," you have no choice.

18 A. I'm merely an instrument of our system. It's  
19 not my personal choice. It is the system I agree to  
20 live in and support.

21 Q. Okay.

22 A. And I believe very strongly in our system of  
23 laws and the way it's enforced. As a matter of fact, I  
24 think we need to clean it up a bit, make it more  
25 certain. People behave well under certainty.

1 Q. What do you mean by that?

2 A. Well, if they see something that happens, such  
3 as embezzlement or financial crimes, and it doesn't get  
4 punishment swiftly and severely, they say: Hmm, that  
5 doesn't seem very fair to me. And you will find those  
6 people beginning to transgress on the rest of society in  
7 other ways. Well, he gets away with it, why can't I.  
8 So, I believe that clarity and certainty is beneficial.  
9 I don't mean being a hard ass. I mean, there's always  
10 room for compassion in our system, but you see people  
11 run the red lights. I mean, I face death by going for  
12 his next hit of crack and he T-bones me. Boom, I knew I  
13 was dead.

14 Q. Yeah. Well --

15 A. But he didn't give a damn.

16 Q. Back when we were doing voir dire, I remember  
17 you particularly -- there were a lot of people out there  
18 and sometimes people's individual faces don't stay with  
19 me when we come back to individual voir dire, but I do  
20 remember you because I remember you raised your hand a  
21 few times and made some comments on some of the areas of  
22 the law. Can you remember what your concerns were in  
23 voir dire?

24 A. No, ma'am. I do not recall the exact  
25 incidents.

1 Q. I'm --

2 A. Perhaps you can help me.

3 Q. I'm thinking that it had to do with the cold  
4 case, the fact that it was in 1992 case.

5 A. Yeah.

6 Q. And I believe you had some concerns about that.

7 A. I do.

8 Q. And I'd like to flush that out a little bit  
9 more with you because, again, you know, you talked to me  
10 about, you know, you have very strong feelings and you  
11 have talked to me about the fact that you can do this.  
12 And you are very convincing, so I -- you know, let's  
13 move on to something else and let's talk about some of  
14 the things that might concern you if you make it on this  
15 jury.

16 A. I'm concerned about -- and you will obviously  
17 answer the questions on the chain of custody.

18 Q. Uh-huh.

19 A. And believability of the evidence.

20 Q. Okay. What do you mean by that, chain of  
21 custody?

22 A. Exactly what it says. Whose had their hands on  
23 it, what are the records that prove that that evidence  
24 was not -- first off, that it was good evidence at the  
25 time it was taken.

1 Q. Uh-huh.

2 A. And that it has remained pure through this  
3 20-something years.

4 Q. Okay.

5 A. I mean, who did the work. What was their  
6 credibility.

7 Q. Okay. And I understand those concerns.

8 A. It goes back to my training inbred in me and  
9 let's get to the facts.

10 Q. Right.

11 A. Get to the facts.

12 Q. I understand those concerns and those are valid  
13 concerns.

14 A. That's the only concern I have, is the  
15 credibility of the State's evidence.

16 Q. Okay. Let's try not to talk over each other.

17 A. Yes, ma'am.

18 Q. And I'll try to let you finish and not  
19 interrupt you. And if, you know, we can kind of do  
20 that, that will work.

21 A. Sorry.

22 Q. It's okay. It's something that you clearly  
23 have very strong feelings about.

24 A. I do.

25 Q. And that's your right. That's important stuff.

1 I want to address that by saying that I do remember now  
2 you talking about the fact that since the charge was so  
3 serious that you were very concerned about the evidence  
4 and the quality of the evidence in the case. Now, it's  
5 very common for people to say: You know what, State,  
6 you know, you can come in here on a death penalty case  
7 and you better have -- you better be right. And I  
8 agree, we better be right. But some people will take it  
9 a step further and say: I'm going to require you to  
10 prove your case beyond a reasonable doubt, to the point  
11 of absolute certainty. Where do you stand on that?

12 A. Well, first off, I recognize there is no  
13 absolute certainty in this life. Beyond a reasonable  
14 doubt is, of course, a variable thing, but if there is a  
15 gap, a big gap, a credible gap it raises a question  
16 mark. And then you have to look at the totality of the  
17 evidence. Is this one area weak, unproven. You know,  
18 nine out of the ten areas are well proven and this one  
19 area unproven to some level of doubt.

20 Q. Okay.

21 A. Then it becomes the evaluation. Say, what's  
22 the -- I don't want to propensity -- the weight of the  
23 various terms.

24 THE COURT: You have five minutes,  
25 Ms. Tise.



1 MS. TISE: Thank you, Judge.

2 Q. (By Ms. Tise) And I want to talk to you about  
3 two things on that. So, can you assure me that you are  
4 not going to raise my level of proof to something other  
5 than beyond a reasonable doubt just because it's a  
6 capital murder case?

7 A. Oh, no, ma'am. You have the same standard of  
8 proof to me in any case.

9 Q. As I would in a traffic ticket?

10 A. Absolutely.

11 Q. Okay.

12 A. Show me the evidence.

13 Q. You were talking about what evidentiary  
14 evidence needs to be brought, what I would have to  
15 prove. And I'm going to show you what I have to prove.  
16 There is a list of the elements in the case. And you  
17 will be able to see them on the right on that small  
18 screen or you can look down on the big screen, whatever  
19 is more comfortable. Right there. Those are the  
20 elements of the capital murder case as I've alleged in  
21 the indictment, Justin and I. That's what I have to  
22 prove beyond a reasonable doubt.

23 A. Uh-huh.

24 Q. Now, the law says that's all I have to prove.

25 A. Yes.

1 Q. Are you comfortable with that?

2 A. Yes, ma'am.

3 Q. Do you see motive on there anywhere?

4 A. No.

5 Q. Are you comfortable with the fact that I don't  
6 have to prove motive?

7 A. Yes, ma'am.

8 Q. And can you go back in that jury room and if  
9 you don't know why the crime happened, can you still  
10 convict if those other things are proven to you beyond a  
11 reasonable doubt?

12 A. Yes, if you can prove that he did it. I don't  
13 care why he did it, he did it.

14 Q. Okay. Fair enough. How do you feel about  
15 police officer's testimony?

16 A. I class it as reliable generally. Always  
17 subject to verification.

18 Q. Okay.

19 A. If it's in isolation of everything else, if it  
20 doesn't fit, one has -- and if the officer has a record  
21 of being untruthful or has been accused of being  
22 untruthful and unreliable, an unfit officer, if you  
23 will, then you have to put a question around what he  
24 says. They are human beings, they are poorly paid for  
25 what they do, yet we intrust them with use of lethal

1 force.

2 Q. That's fair. And that's exactly what the law  
3 requires you to do, to treat them like other witnesses,  
4 evaluate their testimony, and decide whether you  
5 believe it or not.

6 A. Yes, ma'am.

7 Q. I hear you saying you can do that.

8 A. Oh, yes.

9 Q. Okay. You mentioned something in voir dire  
10 about the defendant's age. You had some questions or  
11 concerns about that, I believe. Do you remember that?

12 A. My only concern there was he a teenager, a  
13 juvenile at the time of the alleged crime.

14 Q. And how would that affect your ability to sit  
15 on the jury as -- on a jury in this case?

16 A. If you prove the case, I answer the questions,  
17 the verdict is. I think it's very sad for a juvenile,  
18 if he were a juvenile, to have led a life down that  
19 horrible path of taking another one's life, even if it  
20 were by accident or unintended, if you will. But yet,  
21 that certainly was part of the risk of perpetrating that  
22 crime.

23 Q. Do you understand the difference between direct  
24 and circumstantial evidence?

25 A. I do.

1 Q. And how do you feel about circumstantial  
2 evidence?

3 A. It is circumstantial.

4 Q. And how does that affect your duties as a  
5 juror?

6 A. Well, it has a lower rating in terms of  
7 veracity because it is circumstantial. There's more  
8 room for debate about whether it is or is not. While  
9 factual evidence is not debatable, not questionable, it  
10 is. While circumstance are circumstances and they --  
11 circumstantial evidence can be less reliable than direct  
12 evidence. I say can be.

13 Q. The law says that direct evidence and  
14 circumstantial evidence are to be treated the same and  
15 that the State can prove its case purely through  
16 circumstantial evidence. How do you feel about that?

17 A. There has got to be good circumstantial  
18 evidence to convict.

19 Q. Well, there has to be circumstantial evidence  
20 that convinces you beyond a reasonable doubt.

21 A. Yes. Absolutely. That's the criteria, it has  
22 to convince me.

23 Q. But if you are back there in the jury room, if  
24 all you have is circumstantial evidence do you think you  
25 could render a verdict of guilty?

1           A.    It depends on the circumstances.  I can't give  
2   you a for-example answer.

3           Q.    And I'm asking you to.

4           A.    It would not preclude me from finding the  
5   defendant guilty.

6           Q.    And how do you feel about the burden of proof  
7   and presumption of innocence?

8           A.    Well, the burden of proof is clearly with the  
9   State.

10          Q.    Right.

11          A.    I'm a big believer in our -- that's the reason  
12   we had the revolutionary war.  In England, you are  
13   guilty until you prove yourself innocent.

14                   THE COURT:  Ms. Tise, time is up.  So,  
15   let's wrap it up.

16          Q.    (By Ms. Tise) Okay.  Can you afford the  
17   defendant his Constitutional rights, the presumption of  
18   innocence and the burden of proof being on us?

19          A.    Yes, ma'am, without question.

20                   MS. TISE:  I pass the juror.

21                   THE COURT:  Thank you, Ms. Tise.

22                   Mr. Madrid.

23                   MR. MADRID:  Thank you.

24                               **VOIR DIRE EXAMINATION**

25   **BY MR. MADRID:**

1 Q. Good afternoon, Mr. Bowers.

2 A. Yes.

3 Q. How are you doing? My name is Mario Madrid.  
4 This is Skip Cornelius. We represent Obel Cruz-Garcia.  
5 He is our client.

6 I'm going to ask you some questions. Not a  
7 lot. You filled out the questionnaire. And Ms. Tise  
8 has had the opportunity to talk to you. And I think I  
9 pretty much have an understanding of where you sit, but  
10 there are still a few things I want to ask you. One is  
11 not -- maybe not as important as my other questions, but  
12 just more out of curiosity. Some of the people you  
13 listed that you admire and you put Elizabeth Warren. I  
14 don't know who that was. I had to look that up. She's  
15 a senator from Massachusetts. Am I right?

16 A. Correct.

17 Q. I looked her up. It looks like she went to  
18 school at U of H and her husband worked at -- I looked  
19 all this up because I didn't know who she was, but I was  
20 just wondering -- because I've never heard of -- why you  
21 picked her.

22 A. She has fought tooth and nail for the people  
23 against the big banks.

24 Q. Okay. In the tarp thing. Okay. I read that.  
25 I was just wondering. It's not that important. I was

1 wondering if there something specific because we're in  
2 Texas and she's a senator in Massachusetts. But I did  
3 read that about the tarp.

4           Okay. Well, you know -- and I think you  
5 can tell by the questioning that the State, and anybody  
6 in the State's position would have a concern. I think  
7 if you were sitting over here, you would have a concern,  
8 right?

9           A. Right.

10          Q. That's why Ms. Tise was asking these questions.  
11 The first one is because you have been accused of a  
12 crime, a serious crime. And people in your position  
13 might feel like -- you didn't say this, but a lot of  
14 people would feel they would maybe have a bias or  
15 prejudice against the State because they were prosecuted  
16 by the same district attorney's office. You said that  
17 you don't have one and that -- that you needed to go  
18 through this to be a better person, but I just want to  
19 make sure. Do you have some kind of bias or prejudice  
20 towards them, the State? Like, do you feel like you are  
21 going to hold them to a higher standard --

22          A. No.

23          Q. -- because of your experience?

24          A. No, not at all.

25          Q. I mean, I heard you say -- I guess, the

1 bottom-line is you have been in the military, right? I  
2 heard two things from you. One, you were in the  
3 military; two, you're an engineer. And I guess in the  
4 military you have rules, right? And the scientific way  
5 of looking at things, you have to decide if these things  
6 add up to whatever result, right?

7 A. Okay.

8 Q. And that's how you would approach this process?

9 A. Yes.

10 Q. You would base it on the evidence?

11 And I think you had -- regarding the  
12 standard, you would -- you asked a question -- and I  
13 don't think it's something you would have to be  
14 concerned with if you were on this jury. The Supreme  
15 Court said that you couldn't have the death penalty for  
16 17-year-olds and under. Okay? And so, we wouldn't be  
17 here, the State wouldn't be trying a case if they  
18 couldn't try it, is the bottom line. Okay?

19 A. Yes.

20 Q. So, that was the one question you had sitting  
21 out here, right? And I guess because you had looked at  
22 Mr. Obel Cruz-Garcia and you just wondered that. Right?

23 A. Right.

24 Q. Do you have any questions of me at all?

25 Because I don't really have any further questions of



1 you. I think you would go through -- you would go  
2 through the elements just like you do at your job,  
3 right?

4 A. Sir, the State has the burden of proof. You  
5 don't have to say a word during the trial if you choose  
6 not to.

7 Q. And that is -- that's completely correct.  
8 That's what the law is. After you get past this, you  
9 are going to have to -- you are going to be asked a  
10 series of questions. One regarding mitigation, one  
11 regarding whether the defendant caused the death, or  
12 somebody else did and he anticipated it, all of these  
13 questions. And so, those are what would lead you to the  
14 death penalty. Could you do that?

15 A. Yes.

16 Q. Okay. And you would always -- you would always  
17 judge the evidence, correct?

18 A. That is correct.

19 Q. Thank you.

20 MR. MADRID: Pass the juror.

21 THE COURT: Thank you, Mr. Madrid.

22 Mr. Bowers, would you please step out?

23 There is a door right over here. And the bailiff is  
24 going to assist you out there. We'll be right back with  
25 you.

1 (Venireperson exits courtroom)

2 THE COURT: Juror No. 72, Keith Bowers,  
3 what says the State?

4 MS. TISE: The State is going to exercise a  
5 peremptory strike on Mr. Bowers.

6 THE COURT: That will be granted.

7 (Venireperson enters courtroom)

8 THE COURT: Mr. Bowers, you are excused as  
9 a juror in this case. We want to thank you for your  
10 time. Three days down here is a lot, you know, parking,  
11 getting here, all the time and attention. I want to let  
12 you know that we will be destroying the personal  
13 information that you provided to us. And thank you for  
14 doing that. We could not conduct these proceedings  
15 without interested and concerned citizens like you. So,  
16 we really want to thank you.

17 You were under a bunch of instructions from  
18 me, both in writing and orally. And you are released  
19 from all of those at this time. So, if you need  
20 anything from -- Deputy Perry has work excuses or Metro  
21 bus passes if you need them. But otherwise, you are  
22 excused. You're completely done.

23 VENIREPERSON: May I ask you a question?  
24 Did you ever know Judge Miron Love?

25 THE COURT: Not personally. He was a judge

1 when I was a young prosecutor in this court.

2 VENIREPERSON: He married my wife and I in  
3 our home.

4 THE COURT: He was in the 177th District  
5 Court.

6 VENIREPERSON: Yes.

7 THE COURT: Yes, sir. Have a good day.

8 (Proceedings recessed)

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THE STATE OF TEXAS     )  
COUNTY OF HARRIS        )

I, Mary Ann Rodriguez, Official Court Reporter in  
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